SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 695

THE UNITED STATES OF AMERICA, APPELLANT

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

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"A" [Caption omitted.]

1 *Criminal docket*

District Court of the United States for the District of Columbia

UNITED STATES

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

Case closed.
U. S. Attorney: Each: Charles J. Margiotti.
Criminal No. 167-48.
Charge: Vio. Sec. 313 of the Corrupt Practices Act, as amended by Sec. 304 of the Labor Management Relations Act, 1947.
Bond: $1,000.00 Natl. Surety Corp. Pitts. Pa. and $1,000.00 I. B. Jones.
G. J. No. Orig.

1948

Feb. 11—Presentment and Indictment filed.
Feb. 16—No. 2: Recognizance $1,000.00 taken with National Surety Corp., Pittsburgh, Pa., filed.
Feb. 20—Each: Arraigned, plea not guilty entered. (M 143) (Holtzoff, J.)
No. 2: Recognizance $1,000.00 taken with Isaac B. Jones, surety, filed.
Mar. 5—Each: Motion to dismiss indictment and Points and Authorities in support thereof, filed. Motion to dismiss argued and submitted. (M 127) (Moore, J.).
Mar. 15—Each: Defendant's motion to dismiss heretofore argued and submitted is granted. Memorandum opinion filed. (Moore, J.) (M 127)
Mar. 17—Each: Order granting motion to dismiss indictment, filed. (See Order) (Moore, J.) (M 127)
Each: Government's Notice of Appeal to the Supreme Court of the United States, filed. Statement as to jurisdiction, filed. Notice to Appellee of Rule 12 (3), of the Rules of the Supreme Court of the United States, filed. Designation of Record, filed.
Mar. 22—Each: Appellees' Designation of Record on Appeal, filed.

2 G. J. Original.
Criminal No. 167-48.
Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

In the District Court of the United States

For the District of Columbia

Holding a Criminal Term

January Term A. D. 1948

THE UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

Indictment

Filed in open court Feb. 11, 1948.

THE DISTRICT OF COLUMBIA, *ss:*

COUNT I

The Grand Jurors of the United States of America, duly impaneled and sworn to inquire within and for the District of Columbia and now attending the said Court upon their oaths present:

(1) That at all times mentioned herein the defendant Congress of Industrial Organizations, hereinafter referred to as CIO, was a labor organization as defined in Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

(2) That at all times mentioned herein Philip Murray was the duly elected and qualified President and an officer of said defendant CIO, and actively discharged the duties of his said office as President of said defendant CIO.

(3) That at all the times hereinafter mentioned, the said defendant CIO owned, composed, edited, and published a weekly periodical known as "The CIO News", and the said defendant CIO paid all of the costs and made all of the expenditures necessary and incidental to the publication and distribution of said periodical, "The CIO News", from the funds of the said defendant

3 CIO, including the salaries of the editors and contributors and other writers of texts set forth in said periodical including also the cost of the printing of the said periodical and the cost of the distribution of the said periodical, and all such payments and expenditures, including those representing the cost and distribution of the issue of said "The CIO News"

under date of July 14, 1947, and designated as Volume 10, No. 28, were made by said defendant CIO at Washington, in the District of Columbia, and within the jurisdiction of this Court.

(4) Heretofore, and on the fifteenth day of July 1947, a special election at which a Representative to Congress was voted for, was held in the Third Congressional District of the State of Maryland.

(5) That in anticipation of the holding of the said special election and with the intention thereby to violate the provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, the said defendant CIO caused the following text to be published on the front page of the issue of said periodical, "The CIO News", for and under the date of July 14, 1947, and designated as the issue known as Volume 10, No. 28:

"TEST OF POLITICAL FREEDOM

"By Philip Murray
"President, Congress of Industrial Organizations

"On Tuesday, July 15, a special Congressional election will be conducted in one of the Districts of the City of Baltimore.

"One of the candidates, Judge Ed Garmatz, has been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland. The candidate for the opposition party is notorious among the working men and women of Baltimore for his antiunion views and activities.

"The CIO has been requested by representatives of its members within the Congressional District involved in this election to give publicity to the action of the State PAC and to urge that members of CIO unions in the District cast their votes for Judge Garmatz.

"The Congress of the United States, however, has recently enacted a law, commonly known and referred to as the Taft-Hartley Act. This law purports to make it illegal for American working men and women organized into labor organizations and acting through their duly elected officers to expend their common funds to make their views heard and known in matters relating to elections for federal office.

4 "Senator Taft, the foremost sponsor of the new law, has publicly stated his view that it is the purpose, intent, and effect of the new law to stifle the voice of labor in political matters and particularly to prevent labor from supplying in its own publications, distributed among its own members, facts and information with respect to current election issues and candidates.

"I have been reared in a tradition of respect for the law of the land. In my public and private life I have adhered religiously to the principles of that training. Consistent with those principles I deem it the duty of citizenship to abide by and respect the highest law of the land—the Constitution of the United States.

"It has always been my understanding that that document guarantees the basic American rights of free speech, free press, free assemblage and forbids the denial of life, liberty, or property without due process of law. Those guarantees and those protections, I am advised and firmly believe, are and must be available to all without distinction, caste, or class.

"I am advised and firmly believe that they are rights and protections to which the working men and women of this country, the members of labor unions, the members of CIO unions, are fully entitled.

"If the Taft-Hartley Act means what is has been proclaimed to mean, it flagrantly flaunts fundamental principles which have been cornerstones of American tradition and American freedom ever since the founding of our great Nation.

"I believe that I would be remiss in the performance of my duties as an American citizen if I did not speak and act firmly in support of those great traditions and those vital freedoms which have made America what it is today.

"Under the procedures of our courts it is possible to strike down unconstitutional laws only by taking affirmative action in reliance on and in the exercise of the liberties guaranteed by the Constitution.

"This I have decided to do.

"I have made this decision not in a spirit of defiance or bravado or bitterness. Rather do I act in a spirit of regret that the Congress of the United States should have chosen to curb basic liberties, and in a spirit of hope and trust that the courts of the United States will vindicate those liberties.

"I therefore have directed and requested the editor of the CIO News to publish this statement, including the following paragraphs, and to give to this issue of the CIO News proper circulation among the members of CIO unions in the City of Baltimore and, particularly, within the Congressional District in which this election is scheduled to take place.

"The Taft-Hartley Act has imposed upon American workers and their unions untold ills and hardships which threaten their living and working standards and the very existence of their organizations. The evils of this law have become well known to members of our unions throughout the length and breadth of our land. It is vital for the preservation of the living standards of America that this law be repealed.

"It is apparently the judgment of CIO members and leaders in the City of Baltimore that Judge Garmatz is a candidate whose record, experience, and understanding are such that he may be expected to appreciate the evils of this law and to act in the public interest for its repeal. The CIO News belongs to the members of CIO and serves as the organ of expression for the principles and views democratically adopted by its members and affiliates.

"In performance of my duty as President of CIO, I therefor open the pages of this publication to an expression of views of the CIO members in Baltimore.

"In accordance with their decision and request I take opportunity to urge that all members of CIO residing and voting in the Congressional District in which this election is scheduled to take place cast their votes for Judge Garmatz, and make every effort to bring their neighbors and friends and to all persons eligible to vote in this election a full understanding of the issues involved and of the importance of voting for Judge Garmatz.

"I firmly believe that the action which I now take is fully legal under the law of our land. It is my understanding that the issue as to whether proper respect will be paid to the fundamental guarantees and principles of our Constitution must now rest in the hands of the law enforcement agencies of the federal government."

(6) That in the period beginning on or about the first day of July 1947 and continuing to and through the month of August 1947, at Washington, in the District of Columbia, and within the jurisdiction of this Court, the said CIO, defendant herein, unlawfully did make expenditures in connection with an election in which a Representative to Congress was to be voted for, to wit, a special election held in the Third Congressional District of the State of Maryland on the fifteenth day of July 1947, in the following manner and by the following means:

(a) That the defendant CIO expended a substantial sum of its money in the preparation, composition, printing, publication and distribution of the issue of the periodical, "The CIO News", dated July 14, 1947, and that the aggregate cost for the publication and distribution of that issue is to the Grand Jurors unknown, but includes the sum of approximately nine hundred dollars ($900.00) paid by the defendant CIO for the actual printing expenses of the said issue of the periodical, "The CIO News", and the sum of approximately one hundred dollars ($100.00) for postal charges in connection with the distribution of copies of the said issue of the periodical, "The CIO News", and a substantial part of the aggregate cost of the printing and distribution of said issue was expended by the said defendant CIO for the purpose of publishing the article entitled "Test of Political Free-

dom", hereinabove set forth, and causing said article to be distributed in the Third Congressional District of the State of
6 Maryland and elsewhere in connection with the special election held in that Congressional District on the fifteenth day of July 1947.

(b) That the defendant CIO also caused one thousand copies of the issue of the publication, "The CIO News", dated July 14, 1947, and designated as the issue known as Volume 10, No. 28, to be specially moved and transported from Washington, District of Columbia, into the Third Congressional District of the State of Maryland, by mailing the said one thousand extra copies to the Regional CIO Director at Baltimore, Maryland, and caused the funds of the said defendant CIO to be expended in printing, packaging and transportation of said extra copies of the periodical, "The CIO News", in connection with the aforesaid special election.

In violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

7 COUNT II

And the Grand Jurors aforesaid, upon their oaths aforesaid, do hereby reaffirm; reallege, and incorporate in the Count, as fully set forth herein, each and every allegation contained in paragraphs 1, to 5, inclusive, of Count I of this indictment, and do further present:

That in the period beginning on or about the first day of July 1947 and continuing to and through the month of August 1947, at Washington, in the District of Columbia, and within the jurisdiction of this Court, Philip Murray, the defendant herein, acting in his capacity as an officer of the defendant CIO, to wit, President, and well knowing all of the premises set forth in Count I of this indictment, unlawfully and knowingly did consent to the making of the expenditures by the defendant CIO as set forth in Count I of this indictment.

In violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

Tom C. Clark,
TOM C. CLARK,
Attorney General.

T. Vincent Quinn,
T. VINCENT QUINN,
Assistant Attorney General.

George Morris Fay,
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.

Turner L. Smith,
Thomas L. Smith,
Special Assistant to the Attorney General.
Jesse Climenko,
Jesse Climenko,
Special Assistant to the Attorney General.

A True Bill.

Theodore Long, *Foreman.*

In the District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Motion to dismiss indictment

Filed Feb. 20, 1948

The defendants move, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, that the indictment be dismissed upon the following grounds:

1. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press, as well as the right to peaceably assemble and to petition the government for a redress of grievances of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

2. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the members of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

3. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of defendant Philip Murray, in violation of the First and Fifth Amendments to the Constitution of the United States.

4. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press,

as well as the right to peaceably assemble and to petition the government for a redress of grievances of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

9 5. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the members of defendant Congress of Industrial Organizations, in violation of the First and Fifth Amendments to the Constitution of the United States.

6. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, on their face, abridge the freedom of speech and press as well as the right to peaceably assemble and to petition the government for redress of grievances of the defendant Philip Murray, in violation of the First and Fifth Amendments to the Constitution of the United States.

7. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, are based upon an arbitrary classification and discriminate against labor organizations, their officers and their members, in violation of the Fifth Amendment to the Constitution of the United States.

8. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, fail to provide an ascertainable standard of guilt in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

9. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, invade the rights of defendants, protected by the Ninth and Tenth Amendments to the Constitution of the United States.

Respectfully submitted.

CHARLES J. MARGIOTTI,
LEE PRESSMAN,
Attorneys for Defendants.

10. In The District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Points and authorities in support of motion to dismiss indictment

Filed Feb. 20, 1948

I

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, abridge defendants' freedom of speech and freedom of press, in violation of the First and Fifth Amendments to the Constitution.

Defendant Congress of Industrial Organizations has been indicted for the sole reason that it printed an article in support of a political candidate for election to a federal office in a weekly newspaper, the "CIO News", owned and published by said defendant, and that it caused the issue of said newspaper containing said article to be circulated.

Defendant Philip Murray has been indicted for the sole reason that he consented to the activities of defendant Congress of Industrial Organizations, set forth in the preceding paragraph.

A. The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, would punish defendants for engaging in conduct protected by the First and Fifth Amendments.

Ex Parte Jackson, 96 U. S. 727.
Grosjean v. American Press Co., Inc., 297 U. S. 233.
Lovell v. Griffin, 303 U. S. 444.
Martin v. City of Struthers, 319 U. S. 141, 145, 146.
Hague v. CIO, 307 U. S. 496.

B. A prohibition upon the expenditure of funds requisite to the exercise of civil rights is in effect a prohibition upon the exercise of civil rights.

Bowe v. Massachusetts, 230, Mass. 320, 69 N. E. (2d) 115.
State v. Pierce, 163 Wis. 615, 158 N. W. 696.

11 C. A statute prohibiting the exercise of civil rights is not presumed to be valid.

Near v. Minnesota, 283 U. S. 697.
Thornhill v. Alabama, 310 U. S. 88.
Bridges v. California, 314 U. S. 252.
Murdock v. Pennsylvania, 319 U. S. 105.

Where as here the prohibition upon the exercise of civil rights involves a ban upon the participation in political processes, such prohibition is subject to a particularly searching judicial scrutiny.

U. S. v. Carolene Products Co., 304 U. S. 144, 152, 153.

D. In order to warrant the curtailment of freedom of speech and freedom of the press there must be a clear and present danger that a substantive evil which the government has a right to curb will result if the speech or publication is permitted. The evil involved must be substantial and it must be serious.

Schenck v. U. S., 249 U. S. 47, 52.
Herndon v. Lowry, 301 U. S. 242, 256.
West Virginia v. Barnette, 319 U. S. 624.
Bridges v. California, 314 U. S. 252.

E. Congress could not find that an evil would result from the publication of the article in the "CIO NEWS" described above.

1. The participation by labor organizations in political life is an important and legitimate means for the effective exercise of political rights by working men and women.

DeMille v. American Federation of Radio Artists (Cal. Sup. Ct.), 13 Labor Cases 72,361 (Dec. 16, 1947).
Thomas v. Collins, 323 U. S. 516, 547.
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1.
Gaer, The First Round (1944).
Barbash, "Unions, Government and Politics", 1 Industrial and Labor Relations Review, 66 (1947).

12 2. The publication may not be banned as a corrupt practice which menaces the purity of federal elections.

Ex Parte Yarborough, 110 U. S. 651.
U. S. v. Mosley, 238 U. S. 383.
Burroughs and Cannon v. U. S., 290 U. S. 534.
Smith v. Higinbotham, — Md. —, 48 A. (2d) 754.

3. The use of union dues by defendants to finance the publication could not create substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
DeMille v. American Federation of Radio Artists (Cal. Sup. Ct.), 13 Labor Cases 72,361 (Dec. 16, 1947).
Overacker, "Labor's Political Contributions", 54 Pol. Science Quart. 56, 68 (1939).

F. Even if an evil could result from the publication, Congress is required to curb the evil without suppressing civil rights.

Schneider v. State, 308 U. S. 147, 161.
Hague v. CIO, 307 U. S. 496.
Thomas v. Collins, 323 U. S. 516.

II

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, are on their face in violation of the First and Fifth Amendments to the Constitution.

A prohibition upon expenditures in connection with elections constitutes a complete ban upon the exercise of a civil right since any activity undertaken by defendants requires an expenditure. Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, is therefore invalid on its face.

Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
State v. Pierce, 163 Wis. 615, 158 N. W. 646.

13 III

The publication by an unincorporated association of a newspaper for the purpose of informing its membership of matters of common interest is a vital aspect of the right of free assembly. That right is abridged by Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

DeJonge v. Oregon, 299 U. S. 353, 364.
Thomas v. Collins, 323 U. S. 516.
Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
Linaker v. Pilcher, 70 L. J. K. B. 396, 87 L. T. 421.

IV

The publication by an unincorporated association of an article in its newspaper in support of a candidate for federal office because he is expected to vote for the repeal of a law is a vital aspect of the right to petition for redress of grievances. That right is abridged by Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947.

Cf. Thomas v. Collins, 323 U. S. 516.

V

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations

Act, 1947, are based upon an arbitrary classification and discriminate against labor organizations, their officers and their members, in violation of the Fifth Amendment to the Constitution.

The federal government may not in the guise of law impose criminal sanctions upon one type of unincorporated association for engaging in conduct which another type of unincorporated association may engage in with impunity where no basis for differentiation exists.

14

Hirabayashi v. U. S., 320 U. S. 81, 100.
Connolly v. Union Sewer Pipe Co., 189 U. S. 450.
Hurtado v. California, 110 U. S. 516, 535.
Nichols v. Coolidge, 274 U. S. 531.
Wallace v. Currin, 95 F. (2d) 856 (C. C. A. 4).
Minski v. United States, 131 F. (2d) 614 (C. C. A. 6).
United States v. Ballard, 12 F. Supp. 321 (W. D. Ky.).

Certainly Congress may not deny civil rights to one group which it grants to others or suppress publication of the views of labor organizations which are unincorporated but not those of anti-labor organizations which are unincorporated.

Cantwell v. Connecticut, 310 U. S. 296, 305.
Jones v. City of Opelika, 319 U. S. 103.
Prince v. Massachusetts, 321 U. S. 158.

VI

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, fail to provide an ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments to the Constitution.

Small v. American Sugar Refining Co., 267 U. S. 233.
Connally v. General Construction Co., 269 U. S. 385.
Lanzetta v. New Jersey, 306 U. S. 451, 453.
M. Kraus & Bros. v. U. S., 327 U. S. 614, 621.
Stromb[illegible] v. California, 283 U. S. 359.
New York Times, June 21, 1947, p. 2, col. 7.
New York Herald Tribune, July 11, 1947, p. 1, col. 3.
New York Herald Tribune, July 12, 1947, p. 1, col. 4.
New York Herald Tribune, July 16, 1947, p. 3, col. 2.
93 Cong. Rec., pp. 6593, 6594, 6595, 6596, 6597, and 6598 (June 5, 1947).

VII

An unincorporated association and its officers enjoy the rights protected by the First and Fifth Amendments to the Constitution.

15 Grosjean v. American Press Co., Inc., 297 U. S. 233
Bridges v. California, 314 U. S. 252.
Bowe v. Massachusetts, 230 Mass. 320, 69 N. E. (2d) 115.
Pennekamp v. Florida, 328 U. S. 331.
Virginia Electric & Power Co. v. National Labor Relations Board, 319 U. S. 533.
National Labor Relations Board v. American Tube Bending Co., 134 F. (2d) 993 (C. C. A. 2), cert. denied 320 U. S. 768.
U. S. v. Associated Press, 326 U. S. 1.
Associated Press v. National Labor Relations Board, 301 U. S. 103.
National Labor Relations Board v. American Pearl Button Co., 149 F. (2d) 311 (C. C. A. 8).

VII

The provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947, as construed and applied, invade the rights of defendants, protected by the Ninth and Tenth Amendments to the Constitution.

Article I, Section 4 of the Constitution of the United States.
Newberry v. United States, 256 U. S. 232.

Charles J. Margiotti,
CHARLES J. MARGIOTTI,
Lee Pressman,
LEE PRESSMAN,
Attorneys for Defendants.

16 In the District Court of The United States
For the District of Columbia

Criminal No. 167-48—On Defendants' Motion to Dismiss Indictment.

UNITED STATES OF AMERICA, PLAINTIFF

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF, DEFENDANTS

Turner Smith, Esq., Special Assistant to the Attorney General, Washington, D. C.
Jesse Climenko, Esq., Special Assistant to the Attorney General, Washington, D. C., for Plaintiff.
Charles J. Margiotti, Esq., 720 Grant Building, Pittsburgh, Pennsylvania.

Lee Pressman, Esq., 9 E. 40th Street, New York, New York.
Frank Donner, Esq., 718 Jackson Place NW., Washington, D. C., for Defendants.

BEN MOORE, District Judge:

Opinion

Filed March 15, 1948.

The Labor Management Relations Act recently passed by Congress imposes many conditions, restrictions, limitations and prohibitions upon labor organizations in the economic arena wherein the battles between labor and management are fought. With these economic features of the Act we are not concerned in this case. However, by one section of the Act
17 Congress broadened its scope to include activities of labor organizations in the political field.

Section 304 (2 U. S. C. A. Sec. 251) makes it unlawful for any labor organization to make an expenditure in connection with any election at which candidates for a federal office are to be selected or voted for. The penal sanctions of this section extend also to an officer of a labor organization who consents to such an expenditure by the organization of which he is an officer:

This case arises under Section 304 of the Act.

The Congress of Industrial Organizations, conveniently referred to as CIO, publishes and circulates a newspaper called the CIO News. Philip Murray is president of CIO.

On July 15, 1947, a special election was held to elect a representative in Congress in the Third Congressional District of the State of Maryland. Immediately prior to this election, in express disobedience of the provisions of Section 304 of the Labor Management Relations Act relative to expenditures by labor organizations in connection with federal elections, and for the purpose of testing their constitutionality, Murray wrote an editorial favoring one of the cadidates and opposing the other, and caused it to be published in the CIO News, and circulated in the Third Congressional District of Maryland. Apparently to remove all doubt that CIO was by this act making expenditures in connection with an election, one thousand extra copies of the newspaper containing Murray's editorial were printed and circulated by CIO. The
18 expenditures for publishing and circulating the newspaper were made in the District of Columbia, and the one thousand extra copies were mailed from there to be circulated in Maryland.

This indictment followed. It charges CIO with making expenditures in connection with a federal election by publishing and

circulating the Murray editorial, and Murray as president of CIO with consenting to such expenditures.

Defendants have moved to dismiss the indictment on the broad ground that the applicable part of Section 304 of the Act is unconstitutional because it violates the guaranties of the Bill of Rights, particularly those of the First Amendment.

The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections.

Thus the Court is confronted with the necessity of passing on the validity of Section 304 of the Act, insofar as it relates to expenditures by labor organizations in connection with federal elections.

I am sensible of the deference which courts must accord to the considered will of the legislative branch of the government as expressed in a statute. If a reasonable construction of the statute can logically be made under which it is free from imputa-
19 tion of unconstitutionality, the statute must be so interpreted. If, however, the words of the statute are plain and can have only one meaning, a court cannot escape the obligation of deciding whether or not it falls within the limits of constitutional legislative power. Gemsco, Inc. et al. v. Walling, 324 U. S. 244; 260; United States v. Rice, District Judge, 327 U. S. 742, 753. By the words of this statute expenditures of a labor organization in connection with any federal election are made unlawful.[1] Regardless of whether this provision does or does not fix an ascertainable standard of guilt it is clear that the acts of CIO in publishing and circulating the editorial, and of Murray in consenting thereto, come within its scope. The editorial was written with specific reference to a particular federal election and the expenditure made for publishing and circulating it was therefore necessarily made in connection with that election. The statute contains no exemption or exclusion eliminating from its prohibitions those activities which the Bill of Rights protects. Indeed, few acts in connection with an election, other than those which have

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[1] It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in * * * Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices * * * Every * * * labor organization which makes any contribution or expenditure in violation of this section shall be fined * * *; and every officer * * * of any labor organization who consents to any contribution or expenditure by the * * * labor organization * * * shall be fined * * *." The section further provides penalties for its violation. 2 U. S. C. A., Sec. 251.

for their purpose some sort of coercion, intimidation or corruption of the electorate could be said to be without the boundaries of such protection. It is plain that Congress by this statutory provision denounced as unlawful acts which would otherwise be entirely innocent in nature, and in the exercise of which a labor organization is concededly protected under the Bill of Rights. cf. Grosjean v. American Press Co., Inc., et al., 297 U. S. 233; Bridges v. California, 314 U. S. 252. I conclude, therefore, that the indictment charges an offense under Section 304 of the Labor Management Relations Act, and it follows that if the provisions of that section, pursuant to which the indictment was returned; were constitutionally valid, the indictment would necessarily be sustained.

Judged by its plain terms, the statute on its face fails to survive the constitutional test.

I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgement of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life. cf. Bridges v. California, supra, 269.

The legislative history of the statutory provision under consideration, copiously related in briefs of counsel for the government, clearly shows that the legislation was aimed at the very type of political activity which is charged as an offense in this indictment, namely, the publication and distribution of newspapers containing editorials favoring or opposing candidates for federal office. It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment (which the government concedes was done here) because of its constitutional control over the manner of holding elections, and its consequent power to prevent corruption therein, and to secure clean elections. This argument would be persuasive if the statute prohibited specific acts of a kind which might conceivably be expected to produce corruption in any of its forms, or to prevent in any way the holding of free elections; but the untrammeled right of free expression of views as to candidates for office, through newspapers or other means of conveying the written or spoken word, and of the public in general to have free access thereto, far from being a conceivable means of corrupting or interfering with free elections, is in fact one of the

most valuable means of promoting purity and freedom in the electoral process. See De Jonge v. Oregon, 299 U. S. 353, 365.

It must be remembered that it is not only the right of the publisher of a newspaper or editorial sheet which is protected by the First Amendment; but also, and perhaps over and above that right, there is the right of the people to be informed of the views represented by conflicting interests and opinions. How are they to get such information concerning the views of laboring men and women if the organization in and through which such persons are united in a common purpose is forbidden to publish any
22 views whatsoever?

It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government, is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor Management Relations Act containing this Section 304 is an amendment. Labor Management Relations Act, 1947, 29 U. S. C. A. Secs. 151, 159. However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of
23 voters of differing political party affiliation is not to say that all these may not be unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest.

From what has been said it is plain that no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation. The Supreme Court has said, and reiterated in many cases, that such a situation must exist if any abridgment of the freedoms of the First

Amendment is to be justified. Thornhill v. Alabama, 310 U. S. 88; West Virginia State Board of Education et al. v. Barnette et al., 319 U. S. 624; Thomas v. Collins, 323 U. S. 516. Nowhere is the idea better expressed than in the Thomas case, wherein Mr. Justice Rutledge, speaking for the majority of the Court, says:

"The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

24 Further on in the same opinion Mr. Justice Rutledge continues:

"Where the line shall be placed in a particular application rests * * * on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the special restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. And the answer, under that tradition can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this."

In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of United Public Workers v. Mitchell, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning

the conduct of its own employees. cf. United States v. Wurzbach, 280 U. S. 398. The activities in which Mitchell had engaged and which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the Mitchell case. Moreover, the Mitchell case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composit entities and not individuals, and by their very nature can make no move which does not involve some expenditure.

Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment.

For the reasons given, the motion of defendants to dismiss the indictment will be sustained. An appropriate order may be presented for entry.

Ben Moore,
BEN MOORE,
United States District Judge.

WASHINGTON, D. C., *March 13, 1948.*

26 In the District Court of the United States for the District of Columbia

No. 167-48

UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

[File endorsement omitted.]

Order granting motion to dismiss indictment

Filed March 17, 1948

The defendants, Congress of Industrial Organizations and Philip Murray, officer thereof, having moved the Court for an order dismissing the indictment upon the ground that the applicable provisions of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, are unconstitutional on their face and as construed and applied, and

Said motion having come on to be heard and having heard the arguments of counsel in open court and upon consideration of the applicable provisions of the statute, the indictment and said motion and the points and authorities of defendants in support thereof and the points and authorities of the Government in opposition thereto, and

The Court having determined that that portion of the statute prohibiting expenditures by labor organizations in connection with any election in which candidates for a Federal office are to be selected or voted for is unconstitutional, in accordance with the opinion of the Court rendered herein, dated March 15, 1948, it is

Ordered, adjudged, and decreed, that defendants' motion to dismiss the indictment be, and the same hereby is, granted, and the indictment is dismissed on the ground that that portion of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which

27 prohibits expenditures by any labor organization in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention

or caucus held to select candidates for any of the foregoing offices, is unconstitutional.

BEN MOORE,
United States Judge.

Approved as to form:

GEORGE MORRIS FAY,
United States Attorney.
FRANK J. DONNER,
Counsel for Defendants.

28 In the District Court of the United States for the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed March 17, 1948

The United States of America hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court for the District of Columbia entered March 17, 1948, dismissing the indictment against the defendants, Congress of Industrial Organizations and Philip Murray, officer thereof, which charged them with violating Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act of 1947, in that the Congress of Industrial Organizations expended funds of the organization in connection with an election at which a Representative in Congress was to be elected and that the defendant Philip Murray consented to the expenditure of said funds, on the ground that the statute on which the indictment was based is unconstitutional.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General,
Department of Justice, Washington, D. C.

Dated March 17, 1948.

29 In the District Court of the United States

For the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Designation of record on appeal

Filed March 17, 1948

The clerk will please prepare and certify to the Clerk of the Supreme Court of the United States a transcript of record on appeal in this case and include therein the following:

1. Transcript of docket entries.
2. The criminal indictment.
3. Motion of defendants to dismiss the indictment.
4. The opinion of the district court, dated March 13, 1948.
5. The order of the district court, entered March 17, 1948, dismissing the indictment.
6. Notice of appeal.
7. Statement as to jurisdiction.
8. Statement to appellees, pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States.
9. This designation.

JESSE CLIMENKO,
Jesse Climenko,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

30 In the District Court of the United States

For the District of Columbia

[Title omitted.]
[File endorsement omitted.]

Appellees' designation of record on appeal

Filed March 22, 1948

The Clerk will please prepare and certify to the Clerk of the Supreme Court of the United States a transcript of record on appeal in this case and include therein the following:

1. Transcript of docket entries.
2. The criminal indictment.
3. Motion of defendants to dismiss the indictment.

4. Statement of points and authorities in support of motion of defendants to dismiss the indictment.
5. The opinion of the district court, dated March 13, 1948.
6. The order of the district court, entered March 17, 1948, dismissing the indictment.
7. Notice of appeal.
8. Statement as to jurisdiction.
9. Statement to appelles, pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States.
10. This designation.

Frank Donner,
FRANK DONNER,

Attorney for Defendants Congress of Industrial Organizations and Philip Murray, Officer Thereof, 718 Jackson Place NW., Washington 6, D. C.

31 [Clerk's certificate to foregoing transcript omitted in printing.]

32 Supreme Court of the United States

No. 695, October Term, 1947

Order noting probable jurisdiction

March 29, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument on Monday, April 26, 1948.

33 In the Supreme Court of the United States

October Term, 1947

No. 695

Statement of points to be relied upon and designation of record

Filed March 31, 1948

Pursuant to Rule 13, paragraph 9, of the Rules of this Court, the appellant states that it intends to rely on the following points:
The district erred—
(1) In granting the motion to dismiss the indictment;
(2) In holding unconstitutional Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Manage-

ment Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120);

(3) In holding that said Section 304 of the Labor Management Relations Act, insofar as it prohibits the expenditure of funds of a labor organization in connection with a federal election, is on its face an unconstitutional abridgement of freedom of speech, freedom of the press, and freedom of assembly.

34 Appellant deems the entire record as filed in the above-entitled case necessary for the consideration of the points relied upon.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

MARCH 31, 1948.

[File endorsement omitted.]

(Endorsement on cover:) File No. 52925. District of Columbia, D. C. U. S. Term No. 695. The United States of America, Appellant vs. Congress of Industrial Organizations, Philip Murray, Officer Thereof. Filed March 25, 1948. Term No. 695 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948

In the District Court of the United States, for the District of Columbia

No. 167-48

UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

STATEMENT AS TO JURISDICTION

In compliance with Rule 37 (a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on March 17, 1948, dismissing the indictment filed against the defendants.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of

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May 9, 1942, 56 Stat. 271, 18 U. S. C. Supp. V 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code (28 U. S. C. 345).

STATUTE INVOLVED

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120), provides:

> SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation,

or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work.

THE ISSUE AND THE RULING BELOW

The indictment returned against the defendants charges a violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947. The first count alleges that the Congress of Industrial Organizations, a labor organization, made expenditures from the funds of the organization for the publication of a periodical, called "The CIO News," including the publication of the issue of July 14, 1947, in which, in anticipation of and in connection with the holding of a special election to elect a representative in Congress from the Third Congressional District of Maryland, there was published an article (set forth in full in the indictment) urging members of the CIO to vote for a particular candidate. The indictment al-

leges that funds of the labor organization were expended for the publication and distribution of the July 14, 1947, issue of the CIO News, and for the publication and transportation of one thousand extra copies of that issue in connection with the aforesaid election.

Defendant Philip Murray was charged in the second count with a violation of the statute in that, as president of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count.

Defendants moved to dismiss the indictment on the ground that the statute on which it is based is unconstitutional. They contended that the statute infringes the rights of free expression of opinion guaranteed by the First, Ninth, and Tenth Amendments to the Constitution; that it is too indefinite to prescribe a standard of guilt, as required by the Fifth and Sixth Amendments; and that it arbitrarily discriminates against labor organizations, in violation of the Fifth Amendment.

The district court held that the indictment charged an offense under Section 304 of the Labor Management Relations Act, but that the statute, in so far as it prohibits the expenditure of funds of a labor organization in connection with a federal election is, on its face, an unconstitutional abridgment of freedom of speech, freedom of the press, and freedom of assembly. The court was of the view that Congress was not jus-

tified, in the interests of free and clean elections, in abridging the right of free expression of opinion on the part of labor organizations to the extent to which such rights are abridged by the statute, and that the statute could not be justified as a means of preventing oppression and coercion of minorities within labor organizations.

Since the district court's decision is based specifically on the unconstitutionality of the statute on which the indictment is based, the ruling is subject to review by the Supreme Court on direct appeal. *United States* v. *Classic*, 313 U. S. 309, 399; *United States* v. *Darby*, 312 U. S. 101, 109.

THE QUESTION IS SUBSTANTIAL

The statute involved was passed over a presidential veto by an overwhelming majority of both houses of Congress. It represents the deliberate judgment of Congress that, in the interests of free and untrammeled elections, it is necessary to curb expenditures, designed to affect the outcome of federal elections, on the part of certain entities—corporations and labor organizations. The very fact that the decision here nullifies an enactment which Congress deemed necessary for the welfare of the nation, in itself establishes the substantiality of the question involved.

The district court, we submit, erred in substituting its judgment for that of Congress as to the measures necessary to secure free and untrammeled federal elections, uninfluenced by political

expenditures by large aggregate entities not organized primarily for political purposes which are enabled to exert undue weight in the electoral process. The power granted to Congress by Article I, Section 4 of the Constitution to regulate the times, places, and manner of holding elections for representatives and senators, empowers Congress to surround the entire election process with such rules and regulations as it deems necessary to secure free and honest elections. This power is basic to democratic Government. *Ex parte Yarbrough*, 110 U. S. 651, 666, 667.

The statute here involved represents a gradual development of congressional control of the power of entities to exert undue influence in federal elections. Congress first prohibited political contributions by corporations alone. Act of June 26, 1907, c. 420, 34 Stat. 864. Subsequently, it prohibited political contributions by labor organizations. War Labor Disputes Act of June 25, 1943, c. 144, § 9, 57 Stat. 167–168. Only when it found that its ban on political contributions was being evaded by political activity in the form of direct expenditures by these entities, did it undertake to prohibit political expenditures by corporations and labor organizations.

The statute here involved thus represents a deliberate legislative judgment that enforced neutrality on the part of corporations and labor organizations—entities organized primarily for

economic purposes, controlling substantial aggregations of wealth, and composed of persons not necessarily representing the same political point of view—is necessary to maintain free and untrammeled elections. And by the same token, the statute represents a deliberate legislative judgment that political activities by such entities constitute a clear and present danger to free federal elections. The district court was not justified in overruling the legislative judgment in this matter. See *United Public Workers* v. *Mitchell*, 330 U. S. 75.

Appended hereto is a copy of the opinion of the district court dated March 13, 1948.

Respectfully submitted.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

In the District Court of the United States for the District of Columbia

Criminal No. 167–48

UNITED STATES OF AMERICA, PLAINTIFF

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF, DEFENDANTS

On Defendants' Motion to Dismiss Indictment

Turner Smith, Esq., Special Assistant to the Attorney General, Washington, D. C.; Jesse

Climenko, Esq., Special Assistant to the Attorney General, Washington, D. C., for Plaintiff.

Charles J. Margiotti, Esq., 720 Grant Building, Pittsburgh, Pennsylvania; Lee Pressman, Esq., 9 E. 40th Street, New York, New York; Frank Donner, Esq., 718 Jackson Place, N. W., Washington, D. C., for Defendants.

BEN MOORE, *District Judge*:

OPINION

The Labor Management Relations Act recently passed by Congress imposes many conditions, restrictions, limitations and prohibitions upon labor organizations in the economic arena wherein the battles between labor and management are fought. With these economic features of the Act we are not concerned in this case. However, by one section of the Act Congress broadened its scope to include activities of labor organizations in the political field.

Section 304 (2 U. S. C. A. Sec. 251) makes it unlawful for any labor organization to make an expenditure in connection with any election at which candidates for a federal office are to be selected or voted for. The penal sanctions of this section extend also to an officer of a labor organization who consents to such an expenditure by the organization of which he is an officer.

This case arises under Section 304 of the Act.

The Congress of Industrial Organizations, conveniently referred to as CIO, publishes and cir-

culates a newspaper called the CIO News. Philip Murray is president of CIO.

On July 15, 1947, a special election was held to elect a representative in Congress in the Third Congressional District of the State of Maryland. Immediately prior to this election, in express disobedience of the provisions of Section 304 of the Labor Management Relations Act relative to expenditures by labor organizations in connection with federal elections, and for the purpose of testing their constitutionality, Murray wrote an editorial favoring one of the candidates and opposing the other, and caused it to be published in the CIO News, and circulated in the Third Congressional District of Maryland. Apparently to remove all doubt that CIO was by this act making expenditures in connection with an election, one thousand extra copies of the newspaper containing Murray's editorial were printed and circulated by CIO. The expenditures for publishing and circulating the newspaper were made in the District of Columbia, and the one thousand extra copies were mailed from there to be circulated in Maryland.

This indictment followed. It charges CIO with making expenditures in connection with a federal election by publishing and circulating the Murray editorial, and Murray as president of CIO with consenting to such expenditures.

Defendants have moved to dismiss the indictment on the broad ground that the applicable

part of Section 304 of the Act is unconstitutional because it violates the guaranties of the Bill of Rights, particularly those of the First Amendment.

The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections.

Thus the Court is confronted with the necessity of passing on the validity of Section 304 of the Act, insofar as it relates to expenditures by labor organizations in connection with federal elections.

I am sensible of the deference which courts must accord to the considered will of the legislative branch of the government as expressed in a statute. If a reasonable construction of the statute can logically be made under which it is free from imputation of unconstitutionality, the statute must be so interpreted. If, however, the words of the statute are plain and can have only one meaning, a court cannot escape the obligation of deciding whether or not it falls within the limits of constitutional legislative power. *Gemsco, Inc. et al* v. *Walling*, 324 U. S. 244, 260; *United States* v. *Rice*, District Judge, 327 U. S.

742, 753. By the words of this statute expenditures of a labor organization in connection with any federal election are made unlawful.[1] Regardless of whether this provision does or does not fix an ascertainable standard of guilt it is clear that the acts of CIO in publishing and circulating the editorial, and of Murray in consenting thereto, come within its scope. The editorial was written with specific reference to a particular federal election and the expenditure made for publishing and circulating it was therefore necessarily made in connection with that election. The statute contains no exemption or exclusion eliminating from its prohibitions those activities which the Bill of Rights protects. Indeed, few acts in connection with an election, other than those which have for their purpose some sort of coercion, intimidation or corrupton of the electorate could be said to be without the boundaries of such protection. It is plain that Congress by

[1] "It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in * * * Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices * * * Every * * labor organization which makes any contribution or expenditure in violation of this section shall be fined * * *; and every officer * * * of any labor organization who consents to any contribution or expenditure by the * * * labor organization * * * shall be fined * * *" The section further provides penalties for its violation. 2 U. S. C. A. Sec. 251.

this statutory provision denounced as unlawful acts which would otherwise be entirely innocent in nature, and in the exercise of which a labor organization is concededly protected under the Bill of Rights. cf. *Grosjean* v. *American Press Co., Inc., et al.*, 297 U. S. 233; *Bridges* v. *California*, 314 U. S. 252. I conclude, therefore, that the indictment charges an offense under Section 304 of the Labor Management Relations Act, and it follows that if the provisions of that section, pursuant to which the indictment was returned, were constitutionally valid, the indictment would necessarily be sustained.

Judged by its plain terms, the statute on its face fails to survive the constitutional test.

I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life. cf. *Bridges* v. *California, supra*, 269.

The legislative history of the statutory provision under consideration, copiously related in

briefs of counsel for the government, clearly shows that the legislation was aimed at the very type of political activity which is charged as an offense in this indictment, namely the publication and distribution of newspapers containing editorials favoring or opposing candidates for federal office. It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment (which the government concedes was done here) because of its constitutional control over the manner of holding elections, and its consequent power to prevent corruption therein, and to secure clean elections. This argument would be persuasive if the statute prohibited specific acts of a kind which might conceivably be expected to produce corruption in any of its forms, or to prevent in any way the holding of free elections; but the untrammeled right of free expression of views as to candidates for office, through newspapers or other means of conveying the written or spoken word, and of the public in general to have free access thereto, far from being a conceivable means of corrupting or interfering with free elections, is in fact one of the most valuable means of promoting purity and freedom in the electoral process. See *De Jonge* v. *Oregon*, 299 U. S. 353, 365.

It must be remembered that it is not only the right of the publisher of a newspaper or editorial sheet which is protected by the First Amend-

ment; but also, and perhaps over and above that right, there is the right of the people to be informed of the views represented by conflicting interests and opinions. How are they to get such information concerning the views of laboring men and women if the organization in and through which such persons are united in a common purpose is forbidden to publish any views whatsoever?

It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government, is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor Management Relations Act containing this Section 304 is an amendment. Labor Management Relations Act,

1947, 29 U. S. C. A. Secs. 151, 159. However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of voters of differing political party affiliation is not to say that all these may not unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest.

From what has been said it is plain that no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation. The Supreme Court has said, and reiterated in many cases, that such a situation must exist if any abridgment of the freedoms of the First Amendment is to be justified. *Thornhill* v. *Alabama*, 310 U. S. 88; *West Virginia State Board of Education et al.* v. *Barnette et al.*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516. Nowhere is the idea better ex-

pressed than in the *Thomas* case, wherein Mr. Justice Rutledge, speaking for the majority of the Court, says:

> The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.
>
> For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount

interests, give occasion for permissible limitation.

Further on in the same opinion Mr. Justice Rutledge continues:

> Where the line shall be placed in a particular application rests * * * on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. And the answer, under the tradition, can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this.

In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of *United Public Workers* v. *Mitchell*, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning the conduct of its own employees. cf. *United States* v. *Wurzbach*, 280 U. S. 398. The activities in which Mitchell had engaged and

which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the *Mitchell* case. Moreover, the *Mitchell* case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composite entities and not individuals, and by their very nature can make no move which does not involve some expenditure.

Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not

deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment.

For the reasons given, the motion of defendants to dismiss the indictment will be sustained. An appropriate order may be presented for entry.

(S) BEN MOORE,
United States District Judge.

WASHINGTON, D. C., *March 13, 1948.*

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA, APPELLANT

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 14–19) has not yet been reported.

JURISDICTION

The judgment of the district court was entered March 17, 1948 (R. 20–21). The notice of appeal was filed March 17, 1948. The jurisdiction of this Court is invoked under the Criminal Appeals Act, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682.

QUESTIONS PRESENTED

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947, prohibits contributions or expenditures by corporations or labor organizations in connection with a federal election.

1. On the basis of the decision below, the question presented is whether, insofar as the act prohibits expenditures by a labor organization in connection with a federal election, it is on its face an unconstitutional violation of the First Amendment.

It is anticipated that, in support of the judgment of the district court, respondents will also raise the following questions:

2. Whether Section 304 is too indefinite to prescribe a standard of guilt as required by the Fifth and Sixth Amendments;

3. Whether Section 304 arbitrarily discriminates against labor organizations in violation of the Fifth Amendment.

STATUTE INVOLVED

Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act, 1947 (Public Law 101, 80th Congress, 1st sess., c. 120), provides:

> SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection

with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning griev-

ances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

An indictment was returned against respondents in the United States District Court for the District of Columbia, charging violations of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947. The first count alleges that the Congress of Industrial Organizations, a labor organization, made expenditures from the funds of the organization for the publication of a periodical called the "C. I. O. News," including the publication of the issue for July 14, 1947, in which, in anticipation of and in connection with the holding of a special election to elect a representative in Congress from the Third Congressional District of Maryland, there was published an article (set forth in full in the indictment) urging members of the Congress of Industrial Organizations to vote for a particular candidate. The indictment alleges that funds of the labor organization were expended for the publication and distribution of the July 14, 1947, issue of the "C. I. O. News" and for the publication and transportation of a thousand extra copies of that issue in connection with the aforesaid election. (R. 2–6.)

Respondent Philip Murray was charged in the second count with a violation of the statute in

that, as president of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count (R. 6).

Respondents moved to dismiss the indictment on the ground that the statute on which it was based is unconstitutional. They contended that the statute infringes the right of free expression of opinion guaranteed by the First, Ninth, and Tenth Amendments to the Constitution; that it is too indefinite to prescribe a standard of guilt as required by the Fifth and Sixth Amendments; and that it arbitrarily discriminates against labor organizations in violation of the Fifth Amendment (R. 7–8).

On March 17, 1948, the district court sustained the motion to dismiss (R. 20–21). The district court held that the indictment charged an offense under Section 304 of the Labor Management Relations Act, but that the statute, insofar as it prohibits the expenditures of funds of a labor organization in connection with a federal election, is, on its face, an unconstitutional abridgement of freedom of speech, freedom of press and freedom of assembly (R. 14–19).

In view of its holding in this respect, the district court declined to pass on the questions of whether the statute is too indefinite to prescribe a standard of guilt and whether it arbitrarily discriminates against labor organizations (R. 19).

Inasmuch as the decision of the district court was based on the unconstitutionality of a statute,

the Government has appealed directly to this Court under the Criminal Appeals Act. On March 29, 1948, this Court noted probable jurisdiction (R. 23).

SUMMARY OF ARGUMENT

I. Section 304 of the Labor Management Relations Act, 1947 represents a gradual evolution of congressional policy, designed to secure free and untrammeled federal elections by controlling the power represented by the aggregate wealth of entities, organized primarily for non-political purposes, and composed of persons not necessarily representing the same political point of view. The legislative history of the section shows that Congress was motivated by a desire to limit the use of money for political purposes by those organizations in a position to exercise a disproportionate influence on federal elections, and to insure that money contributed primarily for non-political purposes would not be used in the interest of a political objective to which the contributor might be opposed.

In 1907, Congress became concerned with the great influence represented by the aggregate wealth in the hands of corporations, and undertook to curb that influence by prohibiting political contributions by corporations in connection with federal elections. By 1943, Congress found that the dangers to free elections which it had previously noted in the aggregation of wealth in the

hands of corporations had extended to the aggregation of wealth in the hands of labor unions. It therefore, by the War Labor Disputes Act of 1943, extended to labor unions the prohibition against contributions in connection with federal elections theretofore imposed against corporations. Subsequently, committees investigating campaign expenditures found that the ban against contributions was being evaded by labor organizations which were themselves expending large sums of money on behalf of candidates whom they favored. Section 304 of the Labor Management Relations Act, which prohibited expenditures as well as contributions by corporations and labor organizations, was designed to plug the loophole thus found in the prior laws.

II. Congress has thus found that certain legal entities, organized primarily for purposes not directly political in nature, composed of persons who do not necessarily have the same political views, have, as entities distinct from the individual members, acquired such power arising from combination that they are in a position to exercise a disproportionate influence on federal elections. It has sought to prevent abuse of such power by enforcing political neutrality on the part of the entities in federal elections, leaving those individual members having the same point of view free to combine together and mass their wealth in wholly voluntary organizations. And

to make certain that such association will be in fact voluntary, and not subject to pressure by those in control of the entity, Congress has provided that such association for political purpose be outside the labor organization or corporation itself. The statute is designed to make certain that what purports to be free speech shall actually represent the attitude of those whose money is spent in communicating that speech.

Congress has power to act to preserve the purity of federal elections and may act to surround the entire process with such rules and requirements as it deems necessary and advisable to insure fair and honest elections. *Ex parte Yarbrough*, 110 U. S. 651, 666–667. The statute here involved is merely one aspect of the congressional exercise of such power. Insofar as it prohibits political contributions by labor organizations, it raises no problems of interference with constitutional rights. To the extent, however, that a prohibition against expenditures for political purposes does limit expression of opinion, there does arise the problem of balancing the power of Congress to maintain free elections against the constitutional prohibition against the enactment of legislation abridging freedom of speech, press, and assembly. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 96.

It is well established, however, that First Amendment rights are not absolute and must give

way to the interest of the state in preserving free government. *United Public Workers* v. *Mitchell, supra.* The legislative history of the present statute shows that Congress was well aware of the necessity of balancing the guarantees of the First Amendment against its duty to keep the elective process free and untrammeled. The enactment of this legislation thus represents a deliberate legislative judgment that the danger to free elections arising from the use of the aggregate wealth of the entities covered by the act, by the persons in control thereof, to exercise a disproportionate influence on elections, was sufficiently great to necessitate and justify the incidental impairment of freedom which might result therefrom. We submit that substantial considerations support the legislative judgment in this matter and that this Court should not substitute its judgment for that of the legislature as to the measures necessary to secure free federal elections.

Although First Amendment rights are involved, we do not believe that the "clear and present danger" test, laid down by this Court in many First Amendment cases, is applicable in this field, where the right to be protected, the right of free elections, is as basic to democratic government as the First Amendment itself. In the case most analogous to this, *United Public Workers* v. *Mitchell*, 330 U. S. 75, this Court

spoke in terms of balancing of constitutional rights, rather than in terms of clear and present danger.

The problem is not, however, essentially different if the clear and present danger test is applicable. The fact is that, by passing this legislation, Congress has determined that the use of the aggregate wealth of entities by persons in control thereof for political purposes which may not accord with the views of those making up the entity is a clear and present danger to free elections. The problem still remains whether this Court may substitute its judgment for that of the legislature.

In applying the clear and present danger test, this Court has indicated that the factors to be considered are the nature of the right protected, the extent to which rights guaranteed by the First Amendment are impaired, the seriousness and imminence of the danger to the right which is protected. *Thomas* v. *Collins*, 323 U. S. 516, 530; *Bridges* v. *California*, 314 U. S. 252, 261–263.

Here the right protected, the right to free elections, is basic to democratic government. Restraints are imposed only against legal entities which, as such, have no power to vote. No individuals are restricted in their right to exercise First Amendment rights, either alone or in concert with others who voluntarily join together to express the same political point of view. The danger of disproportionate influence on elections, and of coercion of minorities within the organiza-

tion, was found by Congress, on the basis of facts before it, to be substantial and real. The fact that, in Great Britain, where members of trade unions have traditionally been more unified in their political beliefs than in this country, political activities by trade unions have for years been subject to statutory regulation designed to achieve the objective sought to be achieved by the statute here involved, further suggests that there is a substantial basis for the congressional judgment in this matter. The danger sought to be reached by this statute is certainly a present one. The only activity barred is activity designed to have an immediate influence on an actual election.

Thus, even if the clear and present danger test measures the constitutionality of this statute, the statute does meet the standards laid down by this Court in applying that test.

III. The statute is sufficiently definite to prescribe a standard of guilt. There is a whole mass of activities, commonly described as electioneering, which, when undertaken by corporations or labor organizations, clearly falls within the interdiction of the statute. The only area of doubt lies in the possible existence of border line cases, and that possibility does not render a statute constitutionally vulnerable. *United States* v. *Petrillo*, 332 U. S. 1, 7.

Furthermore, the phrase "in connection with an election," as used in Section 304, when read in

the light of its legislative history, clearly means for the purpose of influencing the result of an election. Purposefulness, *scienter*, is thus a necessary element of the offense, and relieves the statute of the objection that it punishes without warning. *Screws* v. *United States*, 325 U. S. 91, 101–102.

IV. The statute does not arbitrarily discriminate against labor unions. Congress has acted to meet evils as it found them and has waited until a particular danger seemed to it to become pressing before taking action thereon. The ban on political contributions was imposed against corporations many years before it was imposed against labor organizations. The ban on expenditures was imposed only after Congress had become convinced that the prohibition against contributions was being evaded in the form of expenditures.

The legislative history shows that the statute was not extended to unincorporated associations of employers because Congress thought that the ban on corporate contributions would prevent the use of corporate funds for political purposes through the medium of unincorporated associations. The legislative history also shows that other types of unincorporated associations were not brought under the interdiction of the statute because Congress had not found any danger to the electoral process from such organizations.

Congress has advanced step by step to meet the evils as it found them arising from the use of the

aggregate wealth of entities to exercise the combined power of the whole organization in support of the views of those in control, which may not necessarily constitute the views of all the members. It has taken action only where it found danger. That is not unconstitutional discrimination. See *United States* v. *Petrillo*, 332 U. S. 1–9; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 471–472.

ARGUMENT

I

THE LEGISLATIVE HISTORY OF THE RESTRICTION ON POLITICAL CONTRIBUTIONS AND EXPENDITURES SHOWS THAT THE PURPOSE OF THE CONGRESS IN ENACTING THIS PROVISION WAS TO SECURE ELECTIONS RESPONSIVE TO THE WILL OF THE PEOPLE (A) BY LIMITING THE USE OF MONEY FOR POLITICAL PURPOSES BY THOSE ORGANIZATIONS IN A POSITION TO EXERCISE A DISPROPORTIONATE INFLUENCE IN ELECTIONS, AND (B) BY PROHIBITING THE USE OF MONEY CONTRIBUTED AS UNION DUES OR FOR OTHER NON-POLITICAL PURPOSES IN THE INTEREST OF A PARTY OR CANDIDATE TO WHICH THE CONTRIBUTOR MIGHT BE OPPOSED

Section 304 of the Labor Management Relations Act of 1947 represents a gradual evolution of congressional policy, designed to secure free and untrammeled federal elections by controlling the power represented by the aggregate wealth of entities organized primarily for non-political purposes and composed of persons not necessarily representing the same political point of view. The history of the legislation leading up to the statute presently involved shows that it was motivated by a sense of the dangers to free

elections inherent in the massing of wealth in the hands of entities which would enable those in control of such wealth to exercise a disproportionate influence on elections. Congress has sought to obviate those dangers by imposing an enforced neutrality on the part of entities as such, leaving the individual members thereof free to combine together voluntarily to express their point of view in a manner which will make certain that their political activities are wholly free from the pressure which may be exerted by the entities.

A. *The 1907 Act*

The proscription of contributions for the purpose of influencing the outcome of federal elections was first enacted in 1907. Act of January 26, 1907, c. 420, 34 Stat. 864. In substance, the 1907 Act declared it unlawful for a corporation organized under authority of any federal statute to make a money contribution in connection with federal, state, or local elections and declared it unlawful for any corporation, regardless of the authority under which organized, to make a money contribution in connection with any Federal election.

The hearings and debates preceding enactment of the 1907 Act reflect that the primary factor motivating its enactment was a grave concern on the part of the Congress over the strong

influence brought to bear on elections by corporations. Complaint that corporate contributions exercised great influence is recorded as early as 1892 and it was estimated that a sum in excess of 16 million dollars was spent in the presidential campaign of 1896. Hearings before the House Committee on the Election of President, etc., March 12, 1906, pp. 38 and 39. During the hearings, the chairman of a committee sponsoring legislation to give publicity to contributions, Perry Belmont, quoted the following statement by the then Secretary of State in summarizing the necessity for regulation of the use of corporate moneys in elections (p. 12):

> The idea is to prevent * * * the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government. And I believe that the time has come when something ought to be done to put a check to the giving of $50,000 or $100,000 by a great corporation

> toward political purposes upon the understanding that a debt is created from a political party to it.

Public interest in this problem was increased by disclosures of the Armstrong Committee in New York, which, under the guidance of Charles Evans Hughes, discovered that one life insurance company had contributed $50,000 to one of the national political committees during the 1904 presidential campaign. See *People ex rel. Perkins* v. *Moss*, 187 N. Y. 410 (1907). A clamor arose for legislation prohibiting political contributions by corporations. Thus, on November 9, 1904, Alton B. Parker, who had been the Democratic Presidential candidate stated in an address (Hearings of 1906, *supra*, p. 56):

> The greatest moral question which now confronts us is, Shall the trusts and corporations be prevented from contributing money to control or aid in controlling elections.

In his message of December 5, 1905, to the Congress, President Theodore Roosevelt requested legislation to curb political contributions by corporations, stating (40 Cong. Rec. 96):

> All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes * * *.

Again, in his annual message on December 4, 1906, President Roosevelt requested legislation, stating (41 Cong. Rec. 22):

> I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. * * * Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly.

A secondary factor motivating enactment of the 1907 Act was the feeling on the part of the Congress that the diversion of corporate stockholders' money to further the interests of a party or candidate constituted an embezzlement of stockholders' money. Thus, during the hearings on the 1907 law, Congressman Williams stated (Hearings of 1906, *supra*, p. 76):

> Of course there are two reasons for the general idea of this bill. One is * * * that if corporations did not contribute there could not be any great campaign funds. * * * The second reason and the second morality at the bottom of it all is that no corporation has the right and no board of directors of a corporation and no manager of a corporation has the right, to embezzle the money belonging to the stockholders of the corporation and to divert it from its legitimate use to a purpose for which the company was not chartered by appropriating it to Democratic, Republican, Populist, Socialist, or any other campaign fund. The thing is dishonest in its every element.

President Roosevelt's message of December 5, 1905, quoted above, also mentioned this factor.

B. *The 1909 Act*

By the Act of March 4, 1909, c. 321, Sec. 83, 35 Stat. 1103, which was a codification of the Federal Penal Laws, the 1907 statute was repealed and reenacted without change. The debates on the bill, S. 2982, demonstrate a continuing concern on the part of the Congress regarding the strong influence of corporations over elections. See 42 Cong. Rec. 695–703. Consideration was even given to extending the proscription of political contributions by corporations to elections of State legislatures, since at that time United States Senators were elected by State legislatures. In support of this view Congressman Hardy stated (42 Cong. Rec. 696):

> The time has been reached when the great power in this Government may be money and not conscience, and I believe that it is as absolutely necessary to prevent the contribution by big corporations of money for the purpose of electing legislators who may elect Senators as it is to prevent the contribution of money directly in the election [of Senators] by the State legislatures. I make the amendment with a view to purification of the ballot box.

It was further suggested by Congressman Kimball that the prohibition of "money" contribution by corporations was inadequate and that the prohibition should be extended to corporate contribu-

tions of anything of value to a political campaign. He stated (42 Cong. Rec. 696):

> the section under consideration * * * was doubtless called forth by the revelations of the investigation of the great insurance companies in the State of New York. * * * it was the intention of Congress to prohibit corporations * * * from contributing their assets to political contests. But under the section as it now stands it simply prohibits the contribution of money. I contend that it ought to be extended so as to include the contribution of any other thing of value. * * * The House, I assume, is sincerely in favor of protecting the assets of corporations from being dissipated in this way. It is certainly our intention that they should not be allowed to spend money or any of their assets for the purpose of corrupting elections * * *.

However, because of doubt as to the constitutionality of the proposal to extend the proscription to elections of State legislatures and because the bill before the Congress was a bill for codification of all the penal laws, no changes were effected.

C. *The 1925 Act*

In 1921 the Supreme Court, in the case of *Newberry* v. *United States*, 256 U. S. 232, held that Federal corrupt practices legislation as ap-

plied to primary elections of candidates for the Senate was unconstitutional on the ground that elections, within the original intendment of Section 4 of Article I of the Constitution, were those wherein Senators should be chosen by State legislatures, and that the Seventeenth Amendment, providing for election of Senators by the people, did not modify the Congressional power under Section 4 of Article I to regulate the times, places and manner of holding elections. This decision was generally considered to have invalidated all of the Federal Corrupt Practices legislation relating to nominations. See Hearings before the House Committee on Election of President, etc., 1922, pp. 4–6, and 30. It was felt by many in the Congress that any legislation affecting election processes not known at the time of adoption of the Constitution was unconstitutional. (Hearings of 1922, *supra*, p. 30; Hearings before the House Committee on Election of President, etc., 1924, p. 8; 65 Cong. Rec. 9103; 66 Cong. Rec. 2629.) Accordingly, a number of bills were introduced in the House and Senate for the purpose of completely revising the Federal Corrupt Practices legislation in the light of the *Newberry* decision. A comprehensive bill introduced by Congressman Cable, entitled "The Federal Corrupt Practices Act of 1924," was made a part of a postal pay bill, which passed both Houses, but was vetoed by President Coolidge, who stated that he would have approved the corrupt practices provisions if they had stood alone. (65 Cong.

Rec. 10328-9, 10618, 10620, 10652, 11015, and 11128.) At the following session new postal pay increase bills, S. 3674 and H. R. 11444, were introduced and the Cable bill was offered as an amendment to them. The proposed legislation was enacted as the Act of February 28, 1925, c. 368, 43 Stat. 1070, Title III of which is popularly titled "The Federal Corrupt Practices Act, 1925."

In the 1925 Act the proscription against corporate contributions for political purposes was reenacted with amendments as Section 313 thereof. The significant amendments were as follows: (a) The phrase "money contribution" appearing in the 1907 and 1909 Acts was changed to "contributions" and "contribution" was non-exclusively defined in these words (Sec. 302 (d)),

> The term "contribution" includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution;

(b) the prohibition of corporate contributions in connection with "any election by any State legislature of a United States Senator" was changed to "any election at which * * * a Senator * * * [is] to be voted for * * *," to conform to the change in Senatorial elections provided in the Seventeenth Amendment, and the proscription was extended to elections of Delegates

and Resident Commissioners to Congress; (c) a provision was added making it unlawful "for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section"; and (d) by definition primaries and conventions were excluded from the scope of the Act to conform to the *Newberry* decision (Sec. 302 (a); H. Report No. 721, to accompany H. R. 8596, 68th Cong., 1st Sess., p. 3).

The debates preceding the 1925 Act again emphasize the concern felt for the influence exerted on elections by large aggregations of money. Thus Senator Robinson stated (65 Cong. Rec. 9507–9508):

> We all know * * * that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively.

Similar statements appear at 66 Cong. Rec. 2629–2630.

D. *The War Labor Disputes Act*

In 1943 the proscription against the making of contributions in connection with Federal elections[1] was extended to labor organizations.[2] The extension was a temporary one, being effected in Section 9 of the War Labor Disputes Act which Act by its terms was to expire at the end of the war. Act of June 25, 1943, c. 144, Section 9, 57 Stat. 167–168. The hearings on the Smith-Connally bill, which as enacted became the War Labor Disputes Act, were devoted primarily to shaping the proposed machinery for handling strikes during the war period and contain little information relative to the political contributions provision. This provision was neither contained in the bill as it passed the Senate, S. 796, 78th Cong., 1st Sess., nor in the bill as reported by the Military

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[1] While the Supreme Court already had recognized, in *United States* v. *Classic*, 313 U. S. 299, the power of the Congress to regulate primaries, and such Congressional authority already had been exercised in some provisions of the Hatch Act, this proscription was made applicable only to elections.

[2] In 1940 Congress had limited the amount which a labor organization may contribute for political purposes by declaring it unlawful for any "person" to contribute to any candidate or political committee more than $5,000 in any calendar year or in connection with any campaign for "nomination or election" to any Federal office. "Person" was defined to include any association, organization or group of persons, which would include labor organizations. 54 Stat. 767; 18 U. S. C. 61m. Contributions made to or by a State or local committee or other State or local organization were excepted.

Affairs Committee of the House. H. Report No. 440 to accompany S. 796. However, in May 1943 a subcommittee of the House Committee on Labor took testimony on another bill, H. R. 1483, which provided for the prohibition of political contributions by labor organizations (Hearings before a Subcommittee of the Committee on Labor, House of Representatives, 78th Cong., 1st Sess., on H. R. 804 and H. R. 1483; May 1943).

During these hearings, Congressman Landis of Indiana stated that prohibition of political contributions by labor organizations was desirable because (a) substantial contributions by labor organizations to the campaign of candidates for high office give such organizations undue influence and control over successfully supported candidates, reference being made to the contribution by the United Mine Workers during the 1936 campaign (Hearings of 1943, *supra,* pp. 2, 4), and (b) it is unfair to union members for a union to contribute from the general union funds support to a party or candidate to which a portion of the union members are opposed (Hearings of 1943, cited *supra,* pp. 117, 118, 133). Labor union officials testifying at these hearings objected to the provision on the grounds, (a) that proscription of political "contributions" would proscribe expenditures for political purposes as well (pp. 45, 46, 85, 116, 146), (b) that labor organizations are not analogous to corporations—which are covered by the proscription—but are analogous to

business associations and non-profit associations—which are not included in the proscription (pp. 45, 46, 54, 55, 132), and (c) that the proposal merely demonstrated fear on the part of some that, through the participation of labor unions, the people would exercise the political power that is theirs (pp. 116, 129, 139).

Following the hearings on H. R. 1483, Congressman Harness introduced a substitute for the Smith-Connally bill containing the proscription of political contributions by labor organizations. (89 Cong. Rec. 5328.) During the debates on the substitute, Congressman Halleck indicated that a basis for the restriction on political contributions by labor organizations was that a union member's money should not be used by the union for a political purpose to which the member was opposed. (89 Cong. Rec. 5334.) A similar basis was indicated in the Senate debates by Senator Revercomb. (89 Cong. Rec. 5792.) Although there was objection to the provision on the grounds that voluntary associations other than labor unions were not included within its scope and that the provision had no relevancy to a war bill, the bill was passed by both houses. (89 Cong. Rec. 5341, 5629, 5734, 5720, 5721, 5754, 5755, 5781, 5782.) President Roosevelt vetoed the bill and in his veto message made the following comment on the political contributions provision (Senate Document No. 75, 78th Cong., 1st sess., p. 3):

> Section 9 of the bill prohibits for the period of the war political contributions by labor organizations. This provision obviously has no relevancy to a bill prohibiting strikes during the war in plants operated by the Government or to a "War Labor Disputes Act." If there be merit in the prohibition, it should not be confined to war-time, and careful consideration should be given to the appropriateness of extending the prohibition to other nonprofit organizations.

The bill was passed over his veto.

As in the case of the 1907, 1909, and 1925 Acts, the legislative history of the 1943 Act shows that the principal basis for limiting the use of money by corporations and labor organizations in connection with Federal elections was the securing of elections in accordance with the will of the people through removing disproportionate influences exerted by means of large aggregations of money. There is under the 1943 Act a secondary factor, the protection of free elections by preventing the use in behalf of a candidate or party of moneys collected as dues from union members who adhere to an opposing candidate or party. A similar, if not an identical, position was taken under the 1907, 1909 and 1925 Acts relating to use of stockholders' money for political purposes to which the stockholders did not subscribe.

E. *The Labor Management Relations Act, 1947*

Section 304 of the Labor Management Relations Act, 1947, amended Section 313 of the Federal Corrupt Practices Act in three significant respects: (a) the proscription against political "contributions" was extended to "expenditures," (b) whereas the provision formerly applied only to elections, the law as amended was applied also to primaries, conventions and caucuses held to select candidates for Federal office, and (c) the application of the provision to labor organizations, which under the War Labor Disputes Act had been temporary, was made permanent. Act of June 23, 1947, c. 120, Title III, Section 304, 61 Stat. 159; 2 U. S. C. A. 251.

This development was forecast in some of the hearings on campaign expenditures. In 1945 the Special Committee to Investigate Presidential, etc., Campaign Expenditures for 1944 investigated the activities of the CIO-PAC in the 1944 election. Senate Report No. 101, 79th Cong., 1st Sess. That organization asserted that direct contributions by it were limited to State and local elections and Federal primaries and that its activities in Federal elections were limited to political and educational activities through "expenditures" as distinguished from "contributions" to a political candidate or political committee. The Spe-

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cial Committee concluded that the CIO–PAC had not violated the Corrupt Practices Act since the Act by express limitation is inapplicable to primary elections, and the ban does not extend to "expenditures." The following minority comment was made (p. 24):

> Senators Ball and Ferguson, believing that use of union funds to support a particular candidate or course of political action is wrong in that it opens the way for use of money paid in by individuals for political action which they, as a minority would oppose, believe the Federal law should be clarified so that the prohibition on use of such union funds would apply to primary elections and political conventions and to expenditures as well as contributions by unions. There is no doubt in our minds that Political Action Committee primary and preconvention activity carried over into and influenced greatly the general election result, and the loopholes in the law which purportedly permitted this should be closed. If the Political Action Committee had been organized on a voluntary basis and obtained its funds from voluntary individual contributions from the beginning, there could be no quarrel with its activities or program and in fact both are desirable in a democracy.

The same Committee investigated the distribution of a campaign pamphlet, by the Ohio State Council, CIO, in opposition to Senator Taft, as a pos-

sible "contribution" in violation of Section 313 of the Corrupt Practices Act. The CIO contended that this was an "expenditure" but not a "contribution" prohibited by Section 313 and argued that if it were construed to be a contribution then any newspaper violates the law when it publishes an editorial for the purpose of influencing a Federal election (pp. 57–59). As a result of the hearings, it was recommended that the proscription be extended to primary campaigns and nominating conventions (p. 81). In addition, a minority, Senators Ball and Ferguson, proposed that "expenditures," as well as "contributions," be included in the ban on the ground that the investigation showed a pattern for avoiding the limitation on "contributions" by aiding a favored party or candidate through "expenditures" (p. 83). A majority of the Committee rejected this proposal.[3]

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[3] In rejecting this proposal, the Committee majority stated (pp. 83–84):

"The committee as a result of its investigations unanimously came to the conclusion that prohibitions and sanctions had failed to prevent pernicious political activity in Federal elections. They concluded that free and prompt publicity as to campaign contributions and expenses would be more likely to achieve the desired result. Therefore, its recommendations as set forth above stress the reduction of prohibitions and the increase of publicity. So this last proposal is inconsistent with the general theory of the recommendations.

"Moreover, the extension of the prohibition to include expenditures would tend to limit the rights of freedom of

In 1945, the House Special Committee to Investigate Campaign Expenditures, 78th Cong., 2d Sess., issued its report, No. 2093, on its investigation of the extent and nature of contributions and expenditures in connection with the election of Representatives. The following excerpts from this report are indicative of the strong influence

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speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution. The investigations which the committee has made have brought out the fact that many organizations claiming to be educational are claimed by others to be purely political. The line of demaraction is difficult, if not impossible to draw, since it depends to a considerable extent upon human motives. An expenditure made in connection with an election may well be for the publication of pamphlets, or newspaper articles or speeches justifying the point of view of the organization paying for it. An editorial in a newspaper states its position. The reproduction of that editorial in the form of a pamphlet or a speech based on that pamphlet may state the position of the organization paying for it. Free discussion of political questions should be encouraged, not prohibited.

"Furthermore, the prohibition of an expenditure as distinguished from a contribution comes in an entirely different category from the prohibition of contributions in the meaning of the Corrupt Practices Act.

"While the above objections apply to a corporation, and a bank, and a labor organization, all three mentioned in the above recommendation, they are stronger when applied to a labor organization, because the latter is not a legal person like a corporation, but an aggregation of individuals like a church, or a fraternal organization, or a social group.

"It should be noted that the objection to the recommendation is confined to the *prohibition* of expenditures, not to the *publication* of them. Full and complete publicity of the latter should be exacted."

brought to bear on elections by labor organizations (pp. 2–4, 6, 8):

> Of all these organizations, the activities of the Congress of Industrial Organizations Political Action Committee have aroused the greatest public interest and controversy during 1944. The legal right of organizations in the labor movement to contribute directly or indirectly to the political campaigns of parties and candidates has been questioned. The legality of some $700,000 in contributions by the Congress of Industrial Organizations international unions to the Political Action Committee has likewise been questioned. Legal restrictions aside, controversy has centered on the particular form of participation in politics adopted by the Political Action Committee, and on the propriety as a matter of public policy of permitting labor organizations conceivably composed of members with divergent political views to participate in an organized way in support of one political party or slate of candidates in a campaign.
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> * * * * *
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> The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for "educational" work approximating $1,500,000, and among other things regularly supplies over 500 radio

stations with "briefs for broadcasters." Another, with an annual budget of over $300,000 for political "education," has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political "education" in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations.

All of the organizations under investigation have certain factors in common. The recurring characteristics are: (1) Emphasis is placed on the dissemination of literature and propaganda through all available channels of communication—newspapers and periodicals, books and pamphlets, the radio, public meetings, and the mails; (2) their activities are financed in part by the sale of literature and subscriptions, in part by contributions, and in part by dues; (3) most of them operate continuously rather than merely during election campaigns; (4) their expenditures typically do not take the form of direct contributions to candidates or political committees; and (5) their advocacy is designed to inculcate broad sociopolitical attitudes which, while invariably identifiable as favorable to one set of candidates rather than the other in any given campaign, and understood as such by those

whose opinions are affected, nevertheless profess to be nonpartisan and in that sense non-political.

* * * * *

The finances of the Congress of Industrial Organizations Political Action Committee have come from the membership of the Congress of Industrial Organizations. At first the Political Action Committee national organization was financed by pledges from the international unions, aggregating a little under $700,000 and in some instances running as high as $100,000 each. Money paid on these pledges came from the various union treasuries, and as of July 23, 1944, there remained an unexpended balance of $300,127.55. Testimony shows a portion of these funds was spent in primaries. The fund was frozen as of that date in order, according to Mr. Hillman, to assure compliance with the strictest interpretation of the Corrupt Practices Act as amended by the Smith-Connally Act.

* * * * *

The activities carried on under each of the three Nation-wide forms of organization discussed above may be summarized as follows: (1) The Congress of Industrial Organizations Political Action Committee, during its preconvention phase and while operating on funds contributed by the international unions, as such, made contributions of money to candidates in their primary campaigns; and likewise carried on a

general educational program. The educational program included the distribution of literature bearing on the issues of the campaign and on the voting records of candidates; the endorsement of candidates for the Presidency and Vice Presidency by the national Political Action Committee, and the endorsement of congressional candidates and of candidates for local office by the State and local political action committees; radio programs; a campaign to induce people to register as voters; and the holding of meetings and sending out of speakers; (2) after the candidates had been nominated and up to the date of the general election, operating now on funds derived from the contribution program, the Political Action Committee continued to engage in the same range of educational activities, but refrained from making money contributions to candidates or to political committees; and (3) the National Citizens Political Action Committee, operating up to the date of the general election on funds derived from individual contributions not confined to labor circles, engaged in the same range of educational activities as the Political Action Committee, and in addition made money contributions to candidates in their campaigns for election.

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Contributions "in connection with any election" by a corporation or "labor or-

ganization" are prohibited under existing law. But here again we are dealing with a narrow and technically delimited prohibition.

The term "election," as employed in the Federal Corrupt Practices Act, does not include a primary election or the convention of a political party. And while neither a political committee nor a candidate may accept a corporate or labor organization contribution made in connection with an election, any organization other than one "which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates" escapes the statutory classification of "political committee," and so is exempt from the prohibition.

This enabled the Political Action Committee to take the position that its initial pledges of approximately $700,000 from the Congress of Industrial Organizations international unions were in no sense in violation of the War Labor Disputes Act. For they were not made "in connection with any election." An election has been defined in the Corrupt Practices Act, and both Mr. Hillman's testimony and the records of the Political Action Committee indicate that this fund, used in primaries but frozen once the candidates were nominated, was in fact not used for contributions "in connection with any election."

Accordingly, the Committee recomended that the prohibition against contributions in connection with elections be extended to primaries (p. 9).

> It follows that the provisions of the Hatch Act and the Corrupt Practices Act limiting campaign expenditures and requiring the reporting of receipts and expenditures should be amended to cover activities, receipts, and expenditures in connection with primary campaigns and conventions as well as general elections. And all of the definitions now written into this legislation should, of course, be reviewed to this end.

Relative to extension of the prohibition to expenditures, it was stated (p. 11):

> It has been the contention of union groups that money expended by them for or against a political candidate or party and not given directly to candidates or political parties, is not a contribution as defined in the law but is an expenditure not restricted by law.
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> If such a distinction stands then national banks, corporations, and groups, as well as labor organizations, might avail themselves of this avenue to avoid the provisions of the existing law.
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> It is not the province of this committee to attempt to answer these questions here, but attention is directed to the facts developed by the hearings to which the proper legislative committees of the Congress

should give such consideration as they deem proper.

In 1946 further investigation of campaign expenditures by the CIO-PAC, A. F. of L., and numerous political committees and organizations was conducted by the House Special Committee on Campaign Expenditures, 1946. See House Report No. 2739, 79th Cong., 2d Sess. On the basis of this investigation, the Committee concluded that the limitation on contributions by corporations and labor organizations was rendered ineffective because of the widespread "expenditures" made by these organizations in behalf of a favored candidate. The Committee stated (pp. 39–40):

> The apparent purpose of the provisions of the act, limiting the amount of expenditures by candidates, appears to be defeated by the fact that there is no limit to the amount that a political committee or other organization may expend in behalf of a candidate. While the candidates have, to the greater part, limited their expenditures to the maximum allowed under the terms of the act, there is widespread activity by organizations functioning for the purpose of aiding and assisting in the election of candidates, in securing contributions and making expenditures in behalf of candidates, which expenditures are not included within the limitations which the candidates themselves may expend.

There is evidence before the committee that some organizations which are prohibited from making contributions in a political campaign have made expenditures and have engaged in activities the purpose of which were to endeavor to influence the election or defeat of candidates.

It is noted that the act prohibits contributions and does not expressly prohibit expenditures. It is reported to the committee that a former Attorney General had issued a ruling to the effect that the activities above mentioned do not constitute the making of contributions. It is conceivable that the word "contribution" might imply a giving on one hand and accepting on the other, yet from the study of the history of this provision of the act, the committee feels that the activities hereinabove referred to, which are carried on on an extensive scale, constitute violations of the spirit and intent of the act.

The intent and purpose of the provision of the act prohibiting any corporation or labor organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term "making any contribution" related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet

permit the expenditure of large sums in his behalf?

The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures.

The Committee also recommended that legislation be enacted making the restriction on contributions by labor organizations permanent and extending the restriction to include expenditures as well (pp. 45–46).

The Special Committee to Investigate Senatorial Campaign Expenditures, 1946, also considered these problems and in 1947 recommended that primaries and convention be included, that "contribution" and "expenditure" be redefined, and that "expenditures" as well as "contributions" be included in the ban (S. Report No. 1, Part 2, 80th Cong., 1st Sess., pp. 36–39). Relative to the extension of the restriction to include expenditures, the Committee stated (pp. 38–39):

Section 313 of the Federal Corrupt Practices Act of 1925 as amended applies only to "contributions." Experience has shown that some corporations and labor unions have spent money directly on behalf of a political party or candidate and that the applicability of the prohibition upon contributions has in consequence been denied. A redefinition of the terms "contribution"

and "expenditure" as recommended in 3 above, coupled with specific extension of the prohibition to include a prohibition upon "expenditures" will plug the existing loophole whereby corporations, national banks, and labor organizations are enabled to avoid the obviously intended restrictive policy of the statute by garbing their financial assistance in the form of an "expenditure" rather than a contribution.

It is clear, therefore, that prior to the hearings on the Taft-Hartley bills, Committees investigating campaign expenditures had reached recommendations to make all of the changes in Section 313 of the Federal Corrupt Practices Act which were effected by Section 304 of the Labor-Management Relations Act, 1947. As a result, very little material on Section 304 is found in the hearings on the Taft-Hartley bills.

The bill as introduced in the House, by Congressman Hartley, contained the restriction on contributions and expenditures substantially as it was finally enacted. H. R. 3020, Section 304. The Committee report accompanying the bill specified the proposed changes without explanation therefor[4] (House Report No. 245, 80th Congress,

[4] The minority report sharply criticizes Section 304 on the grounds that there was no clear showing of opportunity for corruption, corporations are not analogous to voluntary associations such as labor organizations, and enactment of this provision might constitute a precedent for prohibiting contributions by "in time all organizations, of whatever kind or nature." (House Report No. 245, p. 111.)

1st Session, p. 46), and the debates in the House prior to the initial passage of the bill gave little attention to this provision.[8] The bill as introduced in the Senate, by Senator Taft, S. 1126, did not contain any provision similar to the political contributions provision in the House Bill. However, the Senate and House conferees adopted the provision as passed by the House (House Report No. 510, 80th Congress, 1st Session, pp. 67–68). When the conference report was made to the Senate, lengthy debate on the political contributions provision ensued (93 Cong Rec. 6436–6441, 6445–6448, 6522–6524, 6530). The legislative reports and debates on this section of the Taft-Hartley Act are set forth in full in the separate appendix to this brief.

The hearings conducted by the special committees to investigate campaign expenditures, discussed *supra*, at pp. 27–40, had shown that the proscription against political contributions by labor organizations, enacted in the War Labor Disputes Act, had proved ineffective since labor organizations were able to give all desired support to candidates in the form of expenditures, and that in order to render the proscription effective it would be necessary to include "expendi-

[8] Congressman Hoffman referred to a threat by one union to use $4,000,000 to defeat Congressmen voting contrary to its interests. (93 Cong. Rec. 3428.) Congressman Miller made a lengthy argument in opposition to the provision on numerous grounds. (93 Cong. Rec. 3522–3523.) See also the statement by Congressman Pace (93 Cong. Rec. A–3640).

tures" in the ban. In the Senate debates this factor was emphasized as the primary basis for the amendment. Thus, Senator Taft stated (93 Cong. Rec. 6437, 6439):

> The Smith-Connally Act prohibited the making of contributions by unions to the PAC, yet those unions took the position that they could use their funds for the publication of pamphlets for or against candidates throughout that election, and they evaded the entire law by saying that was not a contribution—not even an indirect contribution—to the candidate who received the benefit of that procedure. That is what this provision of the House bill is intended to reach, if it be agreed to.
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>
> In this instance the words of the Smith-Connally Act have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If "contribution" does not mean "expenditure," then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole

> which developed, following the recommendation by our own Elections Committee, in the Ellender bill.

See also 93 Cong. Rec. 6436, 6437, 6438, 6439.

Another reason for extending the prohibition against political contributions to include expenditures, as stated in the debates, was that union members who do not share the political views of the union should not be required to contribute to the support of a party, candidate or proposition which the union chooses to support but to which such union members are opposed (See 93 Cong. Rec. 6437). Thus Senator Taft stated (93 Cong. Rec. 6440):

> We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute * * * to the election of someone whom they do not favor? * * * the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders.

As previously stated, this was also one of the reasons for prohibiting, in the War Labor Disputes Act, contributions by labor organizations and for the recommendations by the committees

on elections that the proscription be extended to expenditures.

It was emphasized in the debates that the proscription against contributions and expenditures by labor organizations, and corporations as well, would apply only to union or corporate funds and was not intended to apply to voluntary contributions by union members or stockholders for political purposes. Accordingly, it was stated, labor organizations would be free to engage in full political activities, including expressions of political opinions in labor newspapers if the expenditures relating to these activities are made from voluntary contributions of the members. Thus, relative to labor newspapers supported by subscriptions or voluntary contributions, Senator Taft stated:

> If the paper called Labor is operated independently, if it derives its money from its subscribers, then of course there would be no violation [93 Cong. Rec. 6436].
>
> * * * * *
>
> If they [union members] are asked to contribute directly to the support of a newspaper or to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters [93 C. R. 6440].
>
> * * * * *

> I would say the word "expenditure" does not mean the sale of newspaper for money for their worth. If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditure [93 C. R. 6437].

Relative to activities of political committees of labor organizations financed by voluntary contributions of union members, Senator Taft stated (93 Cong. Rec. 6439–6440):

> If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that.
>
> * * * * * *
>
> A union can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose.

The opinion was frequently expressed during the debates that labor organs financed by union funds—as distinguished from voluntary subscription payments or voluntary contributions—were prohibited by the statute from supporting a party or candidate. Thus, when asked whether a labor organ would be permitted under this bill to carry an endorsement of a candidate considered friendly

to labor, Senator Taft replied (93 Cong. Rec. 6436):

> If it were supported by union funds contributed by union members as union dues it would be a violation of the law * * * It is exactly as if a railroad * * * using its stockholders' funds, published such an advertisement in the newspaper supporting one candidate as against another.

Later, when asked whether the practice of printing special election editions of labor organs and distributing these free among the electorate would constitute a violation, Senator Taft replied (93 Cong. Rec. 6437):

> If they are sold to subscribers * * * I would not say that constituted such an expenditure. But if the newspapers were given away * * * I think that would violate the Corrupt Practices Act.

Other statements to the effect that corporate or union organs financed by corporation or union funds are prohibited from supporting one candidate or party against another appear at 93 Cong. Rec. 6436–6440.

During the Senate debates the view was also stated that ordinary newspapers acting in the regular course of their business, as distinguished from corporate house organs and labor union organs, were not affected by the ban against political expenditures; however, it was suggested that a regular newspaper might step out of character

and act in a manner constituting a violation.* In considering this point the following colloquy took place (93 Cong. Rec. 6436–6437):

> Mr. PEPPER. Does the Senator from Ohio mean to tell the Senate that a corporation owning a newspaper cannot have a free editorial policy to oppose candidates and to oppose political parties according to its own judgment?
>
> Mr. TAFT. Not if it used its corporate funds for that purpose, instead of running a newspaper as a business. * * *

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*The question as to whether Corrupt Practices legislation is applicable to ordinary newspapers acting in the regular course of their business received consideration in 1910 during the debates on a bill providing for the publicity of contributions or expenditures made for the purpose of influencing elections. (Act of June 25, 1910, 36 Stat. 822.) In this connection, Representative Gaines stated:

"Corporations are already forbidden to contribute to campaign funds. Most daily newspapers are published by corporations, yet that law does not prevent their legitimate political activity." 45 Cong. Rec. 4929.

"The criticism * * * that it will take cognizance of the business of newspapers in their ordinary business capacity is wholly without foundation. Most of the great dailies of this country are today corporations and are forbidden to contribute, and yet that law does not prevent these newspapers from advocating whatever party or whatever candidate they please. If they make campaign contributions or sell their influence, they should be as amenable to the law as anyone else." 45 Cong. Rec. 4936.

Other statements relative to this matter appear at 45 Cong. Rec. 4928–4929, 4934–4936, A–428.

Mr. BARKLEY. * * * Let us consider the publication of a corporation which, day after day, takes a position against one candidate and in favor of another candidate, and does so in its editorials. The editorials occupy space in that newspaper or publication, and the space costs a certain amount of money. Is that a direct or an indirect contribution to a campaign and if it is neither, what is it?

Mr. TAFT. I would say that is the operation of the newspaper itself.

* * * * *

Mr. TAFT. I do not think it is either a direct or an indirect contribution. I do not think it is an expenditure of the sort prohibited, because it seems to me it is simply the ordinary operation of the particular corporation's business.

Mr. BARKLEY. None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate.

Mr. TAFT. That is correct.

Mr. BARKLEY. Yet the Senator from Ohio is saying that law is applicable to corporations, and is saying that that is a basis for doing the same thing with respect to labor organizations which may publish newspapers.

Mr. TAFT. It never has been applied to newspapers. * * *

* * * * *

Mr. BALL. Two years ago, I was a member of the committee which was headed by

the Senator from Rhode Island [Mr. Green], as I recall. We ran into expenses on the part of corporations, as well as unions, in cases in which by making direct expenditures, as well as contributions, they certainly violated the spirit and intent of the Corrupt Practices Act. I know of one newspaper in my section of the country which makes a practice of printing hundreds of thousands of special reprints and sending them into various States, to influence the elections. I think that is prohibited, just as the practice of the labor paper to which the Senator from Florida has referred—the sending of a special edition of 200,000 or more copies into a State—would also be prohibited.

Mr. TAFT. I would say the word "expenditure" does not mean the sale of newspaper for money for their worth. If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditure. But if the newspapers were given away—even an ordinary newspaper—I think that would violate the Corrupt Practices Act. * * *

The opinion was expressed that the act was not intended to prevent the dissemination in corporation house organs or labor organs of factual information regarding candidates and issues so long as this was not colored in any way. Thus, Senator Ball stated (93 Cong. Rec. 6447):

> I do not think there is a single thing in the bill which prohibits any union or corporation or anyone else from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information.

Senator Taft agreed with this view (93 Cong. Rec. 6447):

> I think it would depend upon all the circumstances in the case. If it was merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects, and was not colored in any way, I would rather agree with the Senator from Minnesota. But I think it would depend, in each case, on the character of the publication.

Previously Senator Taft had taken a contrary position (93 Cong. Rec. 6438).

The opinion was expressed that corporate house organs are limited to the same extent that labor organs are limited (93 Cong. Rec. 6440):

> Mr. MAGNUSON. * * * They [labor groups] publish so-called labor organs, and a part of a member's dues goes to subscribe for the labor organ. If such an organ were not published the member's dues would be correspondingly less. * * * But now unions collect the subscription along with the dues.

> Mr. TAFT. The case is the same as the case of a corporation house organ. A corporation house organ is published and sent out to employees, sometimes many thousands of them. A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law, in my opinion. Such a law has been in existence for 25 years. What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exist with respect to corporations.

Similar statements regarding house organs appear at 93 C. R. 6437, 6438 and 6439.

It was stated during the debates that such business associations as the National Association of Manufacturers and the United States Chamber of Commerce, even if not corporations themselves, are prohibited by the Act from expending moneys for political purposes if such moneys were contributed to them by corporations. Relative to this matter, Senator Taft stated (93 Cong. Rec. 6439):

> Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that. If the National Associ-

> ation of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organizations were included, that question was raised. In order that it might be finally resolved in this bill, we made it perfectly clear that it covers either a contribution to somebody else or an expenditure of one's own funds for the same purpose, in connection with an election.

Other similar statements appear at 93 Cong. Rec. 6438, 6447.

The limitation on expenditures was said to apply to use of the radio for political purposes to the same extent that it applied to newspapers for that purpose (93 Cong. Rec. 6439–6440):

> Mr. PEPPER. * * * Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of

> Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?
>
> Mr. TAFT. Yes.
>
> * * * * *
>
> Mr. TAFT. * * * Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

Other statements in the debates relative to this matter appear at 93 Cong. Rec. 6447, 6523 and 7389.

The question as to whether statements over the radio by news commentators, whose time on the radio is paid for by corporations in connection with advertisement of the corporation's product, which should be intended to influence the outcome of an election comes within the scope of the law was said to constitute a question of fact in each case. 93 Cong. Rec. 6439, 6440, 6447.

Opponents of the bill based their objections on the grounds that labor organizations are not anal-

ogous to corporations for purposes of political activities (93 Cong. Rec. 6447, 6448, 6522), that the proscription of political expenditures violates the First Amendment (93 Cong. Rec. 6436, 6448, 6523, 6530), that corporations may control regular newspapers through advertising (93 Cong. Rec. 6448), that other unincorporated associations are not included within the ban (93 Cong. Rec. 6448), and in general that the purpose of the bill was to deprive labor of a means of political expression and one of the major parties of a principal source of strength (93 Cong. Rec. 6522–6524).

President Truman's message vetoing the Taft-Hartley bill contained the following statement relative to the political contributions and expenditures provisions (House Doc. 334, 80th Cong., pp. 9–10):

> (1) In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of the unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates of issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill.
>
> Furthermore, this provision can be interpreted as going far beyond its apparent

objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinctions between expenditures made by such corporations for the purpose of influencing the results of an election, and other expenditures made by them in the normal course of their business "in connection with" an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations.

After further debate, the bill passed over the President's veto.[1]

F. *The conclusions to be drawn from the legislative history*

The legislative history of Section 304 thus justifies these conclusions:

A. During the forty years prior to its enactment, Congress has continuously regarded the direct impact of corporate funds in the form of contributions to candidates as inconsistent with honest elections, and has therefore interdicted them. The reasons for the prohibition are:

(1) A distrust of the use of large contributions, not because these prove corruption, but because

[1] For the further debate on this provision in the House, see 93 Cong. Rec. 7492; and in the Senate, see 93 Cong. Rec. 7372–7373, 7376–7377, 7389–7390, 7452, 7526.

the large single contributions imply resulting obligations and, therefore, can breed corruption;

(2) A distrust of corporate contributions, large or small, for the reason that they are an *ultra vires* use of corporate funds and presumptively a fraud upon all shareholders who do not participate in the actual control of the donor.

B. During the four years prior to its enactment, Congress prohibited contributions by labor organizations to federal candidates because

(1) The reasons which create distrust of the play of large contributions are equally applicable to any powerful aggregate, be it on either side of the industrial fence;

(2) The use of such funds for the purpose of affecting the outcome of an election must result in the application of the value of these funds in a manner possibly offensive or even hostile, to the political purposes of some of the individual members of the donor.

C. The prohibition against contributions proved ineffective against the use of labor organization funds to affect the outcome of federal elections. During the effective period of the Smith-Connally Act, labor organizations exercised the right to make contributions to shape the results of primary contests. Moreover, experience showed that their literal obedience to the prohibition against contributions to candidates did not prevent them from spending substantial sums to support fa-

vored candidates in the preelection campaigns. Experience proved too, that there is no practical difference between a contribution and an expenditure so far as the effect of the use of money for campaign purposes is concerned. The money has the same practical value and importance and effect whether given to the candidate to be used by him, or whether used directly by the owner for the benefit of the candidate. In the first of these instances, there is a contribution, in the second an expenditure. Because the law prohibited only a contribution, the prohibition of the law was ineffective. It was for this reason that the language of the statute was expanded to prohibit expenditures by corporations and labor organizations in federal political contests.

D. In adopting Section 304 Congress acted with knowledge of the use of labor newspapers and corporate "house organs" in the political contests. The statute applies to such of these as are subsidized by organization funds. All organization expenditures to affect the outcome of federal political contests are prohibited, including expenditures for the publication and distribution of these journals.

E. Congress was aware that the limitation of expenditures in this field projected a problem under the First Amendment. But it determined that its action was necessary to protect the purity of the election process. The enactment is the re-

sult of a reasoned treatment of the constitutional problem rather than a congressional determination to disregard the constitutional problem. It represents an effort to preserve the two constitutional objectives of free expression and honest elections. In the process of accommodating each of these to the other, Congress determined that it was necessary to place restraints on the use of industrial organization funds in the arena of political discussion during the political campaigns. The restraint is limited to the use of the funds of the industrial organization. No restraint is imposed on any individual investor or labor union member, nor does the statute limit group action by investors or union members. The statute was designed to prevent involuntary group political action while preserving every aspect of political self-expression for every group voluntarily formed for that purpose. Congress has not destroyed a constitutional freedom in order to cure an abuse of that freedom. No man was intended to be silenced by the prohibition of this statute, no group of men voluntarily formed for political self-expression to be gagged. But existing economic units, created for economic objectives, may not, under the terms of this statute, profess to speak for all their investors or members when the fact is that such profession of unanimity can be false, and the ability to make the profession can be the result of economic fraud in the case of a corporation or economic duress in the case of a

labor organization. The statute ends that abuse at the same time that it preserves unlimited freedom of expression for every individual and group of individuals. It requires only that the character of the formation of the group be demonstrative of the fact that the funds it uses in political contests were given by its contributors voluntarily for a political purpose. In the view of the Congress, this statute assures that what purports to be free speech shall actually represent the attitude of those whose money is spent in communicating that speech.

II

SECTION 304 IS AN EXERCISE OF THE CONGRESSIONAL POWER TO CONTROL FREE ELECTIONS WHICH DOES NOT UNDULY IMPAIR CONSTITUTIONAL RIGHTS.

A. *Section 304 is designed to prevent the exercise of a disproportionate influence on elections by those who control the funds of entities composed of members of different political views*

The legislative history detailed above makes clear the objective which Congress had in mind in the enactment of Section 304 of the Labor Management Relations Act. Congress has found that certain legal entities—corporation and labor organizations—organized primarily for purposes not directly political in nature, composed of individuals who do not necessarily have the same political views, have, as entities distinct from the

individual members, acquired such power arising from combination that they are in a position to exercise a disproportionate influence on federal elections. It has sought to prevent abuse of such power by prohibiting money collected from all the members for the purpose for which the organization was originally formed from being expended for a different purpose, i. e., the influencing of federal elections.

It cannot be overemphasized that the legislation here involved covers only entities, and not individual citizens. No individual is deprived of his right to spend his money, express his opinion or publish his views on federal elections. No individual is deprived of the right to combine with others of like persuasion into an association by which they can aggregate their funds and spend them in an attempt to persuade their fellow citizens to vote in accordance with their ideas. This legislation affects only legal entities which, as entities, have no right to vote and which are not necessarily composed of persons of the same political persuasion. All that this legislation does is to bar the expenditure of the funds of such an entity for a purpose which does not necessarily represent the views of all the persons from whom those funds were obtained. And to make certain that the pressure of the entity shall not be used to coerce the individual members thereof, Congress has in effect required that the voluntary

association by the individuals be something separate and apart from the entity itself.

The fundamental basis of this legislation is made graphic by some simple arithmetical illustrations. A corporation which has issued a thousand shares may have one stockholder holding 300 shares, another 250 shares, and 10 others holding 45 shares each. In all, therefore, 12 voters would compose the corporation. Yet, in the management of the corporate affairs, the two major stockholders could dominate the policies of the corporation and control its funds. If the corporation were allowed to expend corporate funds in political activities, two men could exercise the power of 12 in influencing an election; two men could exercise the power of 12 possibly against the wishes of 10.

The situation is not essentially different as to labor organizations. We may assume that labor organizations operate by majority rule and that each member has an equal vote in the organization. It would still be true that a bare majority, 51, could control the policies and funds of 100, and thus 51 individuals would be acting with the force and the funds, not of 51, but of 100.

While the use of group funds for a purpose opposed by a minority does not necessarily result in fraud upon the dissidents, its use does translate the energy of that money into action which is inimical to the democratic process. The result

is to thrust the value of the dissidents' funds into the electoral process in a direction to which the dissidents are opposed.

The basic question therefore is whether, in the interests of free elections, Congress has a right to say that a minority or even majority of an organization composed of individuals of different political views, may not exercise the whole combined power of the organization in support of the views of the part which controls the organization. We submit that this is a proper field for congressional action and that in this statute Congress has gone no further than was necessary to achieve the result it could properly seek to accomplish.

B. *Congress has power to act to preserve the purity of federal elections*

There can be no question that Congress has an interest in preserving the purity of federal elections and has the power to act for such purpose.

The power of Congress to enact laws regulating the conduct and holding of federal elections stems from Article I, Section 4, of the United States Constitution, which provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Article I, Section 2, Clause 1, provides that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

Article I, Section 8, Clause 18, confers upon Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States."

This Court has frequently held that this constitutional grant of power over elections is not limited merely to regulating the taking of the vote in federal elections. Congress may act to surround the entire election process with such rules and requirements as it deems necessary and advisable to insure fair and honest elections. *Ex parte Yarbrough,* 110 U. S. 651, 666–667; *United States* v. *Gradwell,* 243 U. S. 476, 482; *Burroughs and Cannon* v. *United States,* 290 U. S. 534, 544–545; *Smiley* v. *Holm,* 285 U. S. 355, 366; United *States* v. *Classic,* 313 U. S. 299, 320. As this Court said long ago in *Ex parte Yarbrough,* 110 U. S. 651, 657–658:

> That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the

legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration.

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends. * * *

If it has not this power it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.

* * * * *

In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections * * * is a constant source of danger.

* * * * *

If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.

If the government of the United States

has within its constitutional domain no authority to provide against evils, if the very sources of power may be poisoned by corruption or controlled * * * without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

For many years and in various ways Congress has exercised its right to concern itself with election abuses and place controls surrounding them. The Federal Corrupt Practices Act and many provisions of the so-called Hatch Act are testimonials to the interest felt by Congress in the need to see that no one group could exercise political influence out of fair proportions. Throughout the life of the Republic there has existed an understandable fear of bigness, whether in our economic system or in political affairs. As times and conditions have changed, much has been regulated.

Thus political committees operating in two or more states are answerable to Congress for information on how their money was collected and by what means it was spent. 2 U. S. C. 242, 243, and 244.

Any person who makes an expenditure in excess of $50 to influence the outcome of a federal political campaign in two or more states must report

to Congress on how and for whom such expenditures were made. 2 U. S. C. 245.

Every candidate for the Senate or the House of Representatives must file with Congress an itemized statement setting out from whom he received contributions and how much money was spent. 2 U. S. C. 246.

Congressional and Senatorial candidates are limited in the amount of money which they can spend in the course of the campaign. 2 U. S. C. 248.

No candidate for federal office may promise an appointment or the use of his influence in order to secure the support of a voter. 2 U. S. C. 249. No person may offer to make an expenditure or give anything else of value to another person in order to induce him to vote or withhold his vote or to vote for or against a candidate for federal office. 2 U. S. C. 250.

Congress has seen fit to place a ban on political activities by federal employees. 18 U. S. C., Supp. V, 61h.

No person may make a contribution or give anything of value in excess of $5,000 during any calendar year in connection with any campaign or to any candidate for federal political office. 18 U. S. C. 61m.

It has also been declared a pernicious political activity by Congress for any person, unincorporated association, corporation or group to pur-

chase any goods or other things of value where the proceeds of such a purchase may inure to the benefit of any candidate for an elective federal office. 18 U. S. C. 61m (c).

No person or firm negotiating or performing under a contract with the United States may make a contribution or promise anything else of value to any political party or candidate for federal office; nor may any person or firm be so solicited for such a contribution. 18 U. S. C. 61m–1.

A limit has been placed by Congress ($3,000,000 in a calendar year), on the amount a political committee operating in two or more states may receive or expend to further candidacy for federal political office. 18 U. S. C. 61t. This ceiling was placed on contributions to and expenditures by political committees in 1940, notwithstanding the fact that Congress had already provided in 1925 that all such political committees must report in detail on how and from whom their contributions were received, and in what manner and to whom such expenditures were made. 2 U. S. C. 242.

More recently, Congress has provided that no person, association, corporation or organization whatever may publish or circulate any printed or photographic matter in connection with any federal political campaign unless the paper or material so circulated contained the names of the persons or the names of the officers of the

organization responsible for the publication. 18 U. S. C., Supp. V, 62, enacted December 23, 1944.

Throughout this legislation is apparent the basic concept that, while money is necessary to the conduct of an election, money represents power unduly to influence an election, power which must be regulated and curbed if elections are to be truly free.

C. *Section 304 is an exercise of the power of Congress to regulate federal elections*

One aspect of the congressional control of that power of money is the legislation here involved. As noted in Point I, as early as 1907, the tremendous power represented by aggregation of wealth in the hands of corporations was recognized as danger to free elections and a law was enacted prohibiting corporations in their capacity as an entity from making contributions toward federal elections. The constitutionality of that section and of similar state statutes has been unquestioned for years. There is, in fact, only one reported decision in which the issue of constitutionality was directly raised and that decision upheld the statute. *United States* v. *United States Brewers' Assn,* 239 Fed. 163 (W. D. Pa.), decided in 1916. The court had before it an indictment of the defendant corporation for having made a "money contribution" in connection with an election at which a Representative to Congress was to be voted for, in violation of Section 83 of the Criminal Code. The defendant filed motions to

quash which challenged the constitutionality of the statute on a number of grounds. One of the reasons assigned was that this statute violated the First Amendment in that it attempted to prohibit and make criminal and punish the freedom of speech and of the press in the discussion of candidates and of political questions involved in such elections.

The court held (239 Fed. at 169) "The section itself neither prevents, nor purports to prohibit, the freedom of speech or of the press. Its purpose is to guard elections from corruption, and the electorate from corrupting influence in arriving at their choice." The motion was denied, as well as other motions upon different grounds, and the defendant corporation thereafter entered a plea of guilty. Thus, there was no occasion for a review of the decision by a higher court.

Similarly, statutes prohibiting government employees or members of Congress from soliciting or receiving money from federal employees have been held not to infringe the constitutional rights of such workers. *Ex parte Curtis*, 106 U. S. 371, 373; *United States* v. *Wurzbach*, 280 U. S. 396. As this Court recently noted in *United Public Workers* v. *Mitchell*, 330 U. S. 75, 98, the argument that a statute prohibiting political contributions by federal employees to members of Congress constituted an unconstitutional infringement upon the political rights of a citizen was, by the time of the *Wurzbach* case "dismissed in a sentence."

Thus, in substance, this Court has held that the right to give money to a political candidate is not a constitutionally protected right.

In the years from 1907 to 1943, labor organizations greatly increased in number, in membership, and in power. In 1943, Congress found that the dangers to free elections which it had previously noted in the aggregation of wealth in the hands of corporations were arising because of the aggregation of wealth in the hands of labor unions. It found that this aggregate wealth was being used by those in control of the organization to influence elections and thus was giving the group in control of such aggregate funds a disproportionate influence in the conduct of national elections. It therefore, by the War Labor Disputes Act, extended to labor unions the prohibitions theretofore imposed against corporations against allowing funds of the entity to be used for political contributions relating to federal elections.

We submit that the reasoning which supports the ban on contributions by corporations supports the ban on contributions by labor unions. It is, of course, true that labor organizations are for the most part unincorporated associations and thus for many purposes may have a different status from that of a corporation. But a labor organization is not in a different status from a corporation in relation to the particular power with which Congress is here dealing, the power to

maintain free elections. A labor organization is unquestionably a legal entity and not an individual, for certain purposes. *United States* v. *White*, 322 U. S. 694, 698, 704. It is certainly an entity and not an individual in relation to the election process. As an organization, it has no vote, just as a corporation has no vote. As an entity, it controls funds contributed by many persons, just as a corporation does. As an entity, it embraces many persons who may be, and often are, of different political beliefs. Thus, in relation to the election process and the danger it represents to the election process, a labor organization can be in the same position as a corporation. Congress, when it prohibited political contributions by a labor organization, found that it did represent the same danger to the election process, and imposed against labor organizations the same prohibition against expenditure of the funds of the entity which it had previously imposed against corporations. Since, as the cases cited above demonstrate, a ban on contributions involves no element of limitation on a constitutional right, the legislative judgment as to the necessity for banning contributions is essentially a matter in which the legislative judgment is final. See *American Federation of Labor* v. *Mann*, 188 S. W. 2d 276 (Tex. 1945), where the court upheld the validity of a state statute prohibiting financial contributions by labor unions.

D. *Only the ban against expenditures raises any problem of conflict with the First Amendment*

In the years from 1945 to 1947, Congress found that its policy as expressed in the War Labor Disputes Act was being evaded; that the aggregate funds of labor organisations, collected from persons of different political beliefs, were being used in large amounts to influence national elections. It found that this was being done, not directly in the form of contributions by the organizations to the candidate or party whom they favored, but indirectly in the expenditure of the funds of the entity in direct political activities on behalf of the candidates favored by those who controlled the funds (see Point I, *supra,* pp. 27–40). Section 304 of the Labor Management Relations Act was thus designed to plug a loophole which Congress had found in the former act, and to prevent labor organizations from doing indirectly that which they could not do directly.

The purpose of this legislation is thus the same as that which motivated the ban against contributions, first by corporations, and then by labor organizations. The purpose is to keep the aggregate wealth of an entity, collected from persons of different political beliefs, from being used by the group in control of that aggregate wealth to exert a disproportionate influence in favor of particular candidates. Basically, therefore, the justification for the prohibition against expendi-

tures is the same as the justification for the prohibition against contributions. Judged in relation to the power of Congress to maintain free elections for federal office, the ban on expenditure is as valid as the ban on contributions. If the contribution by an entity of funds in support of a candidate is a danger to free elections which Congress has the right to control, the expenditure of funds by the same entity for the same purpose, the indirect accomplishment of the same effect, should also be a matter which Congress has a right to control.

The constitutional problem in regard to the ban against expenditures arises because, at this point, and only at this point, another constitutional right comes into play, the right to free expression of opinion guaranteed by the First Amendment. A prohibition against handing over money to a candidate in order to enable him to express his opinions to influence the voters does not prevent the organization from expressing its own opinions for or against a candidate, or for or against the political issues involved in a particular campaign. But to the extent that a prohibition against expenditures for political purposes limits expression of opinion, there does arise the question of balancing the power of Congress to maintain free elections against the constitutional prohibition against the enactment of legislation abridging freedom of speech, press, assembly, and the right

to petition for redress of grievances.* See *United Public Workers* v. *Mitchell*, 330 U. S. 75, 95–96, where this Court said:

> * * * The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. The powers granted by the Constitution to the Federal Government are subtracted from the totality of sovereignty originaly in the states and the people. Therefore, when objection is made that the exercise of a federal power infringes upon rights reserved by the Ninth and Tenth Amendments, the inquiry must be directed toward the granted power under which the action of the Union was taken. If granted power is found, necessarily the objection of invasion of those rights, reserved by the Ninth and Tenth Amendments, must fail. Again this Court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of government.

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* The opinion of the district court states (R. 15) that the Government conceded that "rights guaranteed by the First Amendment are abridged" by the statute. The Government conceded in the district court no more than is conceded here, that the ban against expenditures did bring the First Amendment into play. Our position below, as here, was that the limitations imposed by the statute are reasonable limitations which do not violate the First Amendment.

E. *Congress has determined that political expenditures by entities represent a clear and present danger to free elections*

We start with the premise, clearly articulated, in the *Mitchell* case, *supra*, that First Amendment rights are not absolute but must at times give way to the interest of the state in preserving free government. See also *Whitney* v. *California*, 274 U. S. 357, 371; *Frohwerk* v. *United States*, 249 U. S. 204, 206. Congress has determined that as to entities, corporations and labor organizations, organized primarily for nonpolitical purposes, enforced neutrality in political campaigns is necessary if voters and candidates are to be free from the undue influence which can be exerted by persons in control of the aggregate wealth of such entities. The Government asserts that the limitation upon expression of opinion imposed by this statute is upon the abuse rather than upon the freedom, that the determination as to the need for this limitation upon the abuse was peculiarly within the competence of the Congress, that the statute is therefore constitutional.

As the legislative history set forth in point I shows, Congress was well aware of the necessity of balancing the guarantees of the First Amendment against its duty to keep the election process free and untrammeled. The possibility that the prohibition against expenditures designed to influence federal elections would involve impair-

ment of First Amendment rights was considered and debated. Yet, by an overwhelming majority, Congress passed Section 304 of the Taft-Hartley Act. The enactment of that legislation thus represents a deliberate legislative judgment that the danger to free elections arising from the use of the aggregate wealth of the entities covered by the act, by the persons in control thereof, to exercise a disproportionate influence on elections, was sufficiently great to necessitate the incidental impairment of First Amendment rights which might result therefrom. The question before this Court, as we view it, therefore, is whether the court in the exercise of its power to interpret the Constitution, has the right to upset the legislative judgment in that respect.

That, we submit, is the question, whatever legal formula may be used to discuss it. It is significant that, in the case most analogous to this, that relating to restrictions on political activities by government employees, *United Public Workers v. Mitchell*, 330 U. S. 75, the majority opinion of this Court does not speak in terms of the "clear and present" danger test. As noted above, it talks in terms of balancing constitutional rights. This Court further said (p. 102):

> We have said that Congress may regulate the political conduct of government employees "within reasonable limits," even though the regulation trenches to some extent upon unfettered political action. The

> determination of the extent to which political activities of governmental employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the generally existing conception of governmental power. That conception develops from practice, history, and changing educational, social and economic conditions. The regulation of such activities as Poole carried on has the approval of long practice by the Commission, court decisions upon similar problems and a large body of informed public opinion. Congress and the administrative agencies have authority over the discipline and efficiency of the public service. When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with such a background that these restrictions are unconstitutional.

This opinion suggests that, in the realm of the congressional power over elections, a power basic to democratic government, "clear and present danger" is not the measure of congressional power; that Congress is free to act up to the point where such regulation "passes beyond the generally existing conception of governmental power," as that conception develops "from practice, history, and changing educational, social and economic conditions."

The problem is not essentially different if we accept the standard laid down in recent decisions of this Court dealing with other phases of free speech problems that "any attempt to restrict those liberties [guaranteed by the First Amendment] must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger." *Thomas* v. *Collins*, 323 U. S. 516, 530. Or, as this Court said in *Board of Education* v. *Barnette*, 319 U. S. 624, 639, First Amendment rights "are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

The fact is that, by passing this legislation, Congress has determined that the use of the aggregate wealth of entities, by persons in control thereof for political purposes which may not necessarily accord with the views of those who contributed to that aggregate wealth, is a clear and present danger to free federal elections. Thus, accepting the clear and present danger test, the question still remains whether the court may substitute its judgment for that of Congress and say that the activities here prohibited are not a clear and present danger to free elections.

F. *Congress had a reasonable basis for concluding that the conduct prohibited by this legislation constituted a clear and present danger to free elections*

This Court has indicated that, in this domain,

where fundamental constitutional rights are involved, it will not consider itself bound absolutely by the legislative judgment as to the necessity for restriction. *Thomas* v. *Collins,* 323 U. S. 516, 531; *Board of Education* v. *Barnette,* 319 U. S. 624, 639; *Thornhill* v. *Alabama,* 310 U. S. 88, 96; *Schneider* v. *State,* 308 U. S. 147, 161; *Herndon* v. *Lowry,* 301 U. S. 242, 258. See also *Craig* v. *Harney,* 331 U. S. 367, 373; *Pennekamp* v. *Florida,* 328 U. S. 331, 335.

But we do not understand this Court to have held that, where a legislature may reasonably conclude that the conduct which it seeks to prevent is a clear and present danger to an interest which it has a right to protect, the court can substitute its judgment for that of the legislature. To the contrary, it has stated that when a statute comes before it cloaked in the armor of a legislative finding, that legislative determination is entitled to great weight. *Cantwell* v. *Connecticut,* 310 U. S. 296, 307–308; *Whitney* v. *California,* 274 U. S. 357, 371; *Gitlow* v. *New York,* 268 U. S. 652, 668. See *United Public Workers* v. *Mitchell,* 330 U. S. 75, 102.

None of the cases dealing with impairment of the rights of free speech reach the precise point at issue here. They suggest only the guide posts used by this Court in determining whether a legislature has exceeded constitutional bounds. The factors to be considered are the nature of the right protected, the extent to which rights guaranteed

by the First Amendment are impaired, the seriousness and the imminence of the danger to the right which is protected. *Thomas* v. *Collins,* 323 U. S. 516, 530; *Bridges* v. *California,* 314 U. S. 252, 261–263.

1. *The right protected is basic to democratic government.*—As we have shown, there is no question that the right to preserve free elections is a right which Congress may act to preserve. It is, in fact, a right as basic to the preservation of democratic government as the First Amendment rights themselves. Hence, those cases in which the interest to be protected has been found insubstantial in relation to the restraint imposed have no application here. E. g., *Thomas* v. *Collins,* 323 U. S. 516, 536; *Board of Education* v. *Barnette,* 319 U. S. 624, 639; *Schneider* v. *State,* 308 U. S. 147, 163. Whether one talks in terms of balance of constitutional rights or clear and present danger, the significant fact is that the right sought to be protected is as fundamental as the rights infringed.

2. *The restraints imposed are limited.*—On the other hand, the restraints imposed by this statute are of a limited character. As noted above, no individuals are affected thereby; only the activities of legal entities are curtailed, and those are curtailed only to the extent that they are designed to influence national elections. Even the legal entity is barred in this respect, only to the extent that it uses, to express its organizational views on

politics, funds paid to the organization, not primarily and not specifically for political purposes, paid by persons who do not necessarily have the same political views as those who dominate the organization. Nothing in the statute bars members of a labor organization from aggregating funds voluntarily contributed by members having the same point of view, and using that money to express labor's view in support of candidates and issues. Nothing in the statute bars corporate stockholders from combining together and expressing capital's point of view. This legislation in essence, merely provides that persons who join a labor organization for the primary purpose of bettering the conditions of employment, or who buy corporate stock for the primary purpose of making money, cannot be required *ipso facto* to support political views which they may or may not share. The fallacy of the reasoning in *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230 (1946), is that the decision assumes, contrary to the fact, that the statute would destroy completely political activity by unions. The British experience, discussed *infra*, is to the contrary.

This is not a broad general statute, vague in outline and unlimited in scope. It has none of the generality found to be an evil in the statutes involved in such cases as *Stromberg* v. *California*, 283 U. S. 359, 369, and *Herndon* v. *Lowry*, 301 U. S. 242, 256–258. It is a specific statute, directed to a particular evil, designed to prevent

evasion of a restriction which, as we have shown, Congress clearly had the right to impose. We discuss the question of definiteness in more detail in Point III, *infra.*

3. *The danger to free elections is real.*—It certainly cannot be said that no real danger to free elections can arise from the untrammeled expenditure of funds by corporations and labor organizations. As the legislative history summarized in Point I shows, the danger was found by Congress, on the basis of the facts before it, to be substantial and real, both in respect to the disproportionate influence of the power arising from combination, and in respect of the power of minorities or bare majorities of an organization to exercise the entire political weight of the organization. The danger of evasion by unions of the ban against political contributions by direct expenditures by the unions themselves was found to exist on the basis of investigation of practical experience in the conduct of elections.

It is interesting to note that as early as 1939, when political activities by labor unions had not yet reached the proportions attained in 1940 and 1944, a leading authority on the subject of campaign contributions was predicting that the emergence of union power in this field would result in demand for regulation. Overacker, *Labor's Political Contributions,* 54 Political Science Quarterly 56, 61 (1939). In that same article it was pointed out that "An examination of the constitu-

tions of ten typical organizations revealed that in at least half of them there was no statement which would prevent the use of funds for political purposes by the officers on their own initiative" (p. 68).

In Great Britain, where members of trade unions have traditionally been more unified in their political beliefs than in this country, political activities by trade unions have for years been subject to statutory regulation designed to achieve the objective sought to be achieved by the statute here involved, i. e., to keep the funds of the trade union from being used by those in control in support of political views not shared by the minority. See Rothschild, *Governmental Regulation of Trade Unions in Great Britain*, 38 Columbia Law Review 1, 1335 (1938).

In 1910 it was held that a labor union could not contribute money to the labor party for political purposes. *Amalgamated Society of Railway Servants* v. *Osborne* (1910) A. C. 87.

This limitation was modified in the Trade Union Act of 1913, 2 & 3 Geo. V, c. 30 (1913). In substance, this Act provided that a labor union might make contributions or expenditures for political purposes only on the following conditions:

(a) That a majority of the members vote that a political fund be created.

(b) That any member who objected to making a contribution to the fund should

be exempt and should not be discriminated against for having made this choice.

(c) That the political fund should be kept separate from the general union funds and that the rules governing the establishment of the political fund and the use of the political fund should be subject to the approval of the Registrar of Friendly Societies.

The political objects to which the statute applied were listed as:

(a) payment of any expenses incurred directly or indirectly by a candidate for Parliament or other public office before, during or after the election in connection with his candidature.

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate.

(c) the maintenance of any person who is a member of Parliament or other public office.

(d) expenditure in connection with the registration of electors or the selection of a candidate for Parliament or other public office; and

(e) the holding of political meetings of any kind and the distribution of political literature or political documents of any kind unless the main purpose of the meeting or the distribution of literature and

documents is in furtherance of nonpolitical purposes.*

Various changes in the 1913 Act had been sought from time to time. The national strike of 1926 gave this movement impetus and it materialized in the Trade Disputes and Trade Unions Act of 1927. (17 & 18 Geo. V, c. 22 (1927).) In so far as the political contribution provision is concerned, the only significant change effected by the 1927 Act was to place the burden on labor unions desiring to participate in political activities to obtain written consent from each union member prior to obtaining or levying a contribution or assessment on such member, whereas under the 1913 Act the burden had been on the union member to state in writing his objection to making a political contribution in order to secure exemption therefrom. The 1927 Act also requires a separate levy for political contributions, whereas under the 1913 Act a general levy with an appropriate reduction for those claiming an exemption might be made.

It is interesting to note that, despite these limi-

* It appears that the 1913 Act was not intended to apply to political newspapers or to expenditures for union meetings or distribution of literature which has only an incidental political purpose such as the passage of legislation in which labor unions are interested. See *Rothschild, op. cit. supra*, 38 Col. L. Rev. 1364. But, in view of the specific phraseology of the 1913 act, referred to above, it is clear that the British act applies to expenditures for political purposes as well as contributions.

tations, the political voice of labor was so far from silenced that the Labor Party was able to come into power and was able to repeal the 1927 Act. Trade Disputes and Trade Union Act, 1946, 9 & 10 Geo. VI, c. 52. The Labor Party itself left in force the provisions of the 1913 Act.

It is no answer to the Congressional purpose to assert, as did the court below, that labor organizations normally act by majority rule. The very fact that they do act by majority rule permits undue and disproportionate influence by persons in control of the organization who can thus exercise the whole power of the organization in support of the particular views which they favor. The case of *De Mille* v. *American Federation of Radio Artists*, 31 Cal. 2d 137, pending on petition for certiorari, No. 679, this Term, in which the suspension of a member of a labor union for failure to pay a political assessment was upheld on the theory that he was bound by the majority decision, serves to demonstrate the need for the legislation here involved, if individuals who join a labor organization or stockholders who buy stock in a corporation are not to be coerced into supporting views which they do not entertain. And in order to make certain that political activities by union members or corporate stockholders are in truth, and in fact completely voluntary acts, free from the pressure of the group, Congress has in effect required that political activities be kept apart from the regular function of the organization.

This statute was designed to prevent active electioneering by mass organizations in a position to exercise tremendous power, which, as entities, have no right to vote. Mass weight is being curbed in a field in which the individual, the voter, is the significant factor. And while, of course, individuals may and should combine to give expression to their views, this legislation is designed to make certain that individuals who desire so to act, do so voluntarily and not under compulsion of an organization which they have joined for another purpose.

4. *The danger is a present one.*—Certainly it cannot be said that the danger sought to be reached by this statute is not a present one. The activities with which Congress is dealing in this statute are not activities designed to effect some remote, future result. The only activity barred is activity designed to have an immediate influence on a pending election. And the statute was extended to cover expenditures in addition to contributions because Congress found that contributions had in fact been made in the guise of expenditures. Cases which deal with the question of whether particular utterances would tend to bring about the evil which could be prevented thus have no relevancy to the issues here, e. g. *Bridges* v. *California,* 314 U. S. 252; *Craig* v. *Harney,* 331 U. S. 367. The only danger to which this statute is directed is an immediate and a present one.

Congress has thus found that the use of the

aggregate wealth of corporations and labor organizations, by persons in control thereof, to further political views not necessarily shared by the persons who contributed to that aggregate wealth represents a clear and present danger to free federal elections. The cases indicate that the legislative judgment in this regard is entitled to great weight, and, as we have shown, substantial considerations support the legislative judgment. The decision below is, in essence, the substitution of a judicial opinion on matters of policy for the legislative judgment in an important area of federal power. That, we submit, is not the proper function of the courts.

III

SECTION 304 IS NOT INVALID FOR INDEFINITENESS

Respondents have indicated that they intend to renew the contention made in the Court below that the prohibition against "expenditure in connection with any election" to the offices specified in the statute is so vague and uncertain that it fails to set up a definite standard of guilt, and hence that the statute is a violation of the Fifth and Sixth Amendments, as well as improper legislation restricting First Amendment rights.

We submit that, fairly read, as it must be, in the light of its legislative history and manifest purpose, the statute is not subject to criticism on the ground of indefiniteness. There is a whole mass of situations, a great variety of activities,

commonly described as electioneering, which, when undertaken by corporations or labor organizations, clearly fall within the interdiction of the statute. The only area of doubt lies in the possible existence of border line cases, and that, as we discuss in more detail *infra*, is not sufficient to render a statute constitutionally vulnerable. *United States* v. *Petrillo*, 332 U. S. 1, 7.

A. *"In connection with any election" as used in Section 304 means for the purpose of influencing the result of the election*

Section 304 of the Labor Management Relations Act is merely one aspect of the exercise of the congressional power to control the influence of money in federal elections. Specifically, it is an amendment to Section 313 of the Corrupt Practices Act of 1925, which was itself a reenactment of the Act of January 26, 1907. Since 1907, therefore, a statute has prohibited contributions by corporations "in connection with" federal elections, and no one seems to have any doubt as to the meaning of the phrase "in connection with" elections. We submit that, considering the statute here involved in relation to its place in the statutory scheme and its purpose as revealed by its legislative history, "expenditure in connection with" an election can have only one meaning, i. e., expenditure for the purpose of influencing the result of an election for the offices specified in the statute.

That such is the proper interpretation becomes perfectly clear when the section here involved is read in relation to other provisions of the Corrupt Practices Act. Thus, Section 306 of the 1925 Act (2 U. S. C. 245) requires a statement by every person other than a political committee who makes an expenditure "for the purpose of influencing in two or more States the election of candidates"; Section 307 (2 U. S. C. 246) requires a statement by a candidate of expenditures made by him or with his knowledge and consent "in aid or support of his candidacy for election, or for the purpose of influencing the result of the election." "In connection with" an election was apparently kept in Section 313 because that section was taken over directly from the 1907 Act, but it obviously was intended to serve the same purpose as the more artistic phraseology in the sections quoted above.

Furthermore, the entire legislative history of Section 313 from its first enactment to its last amendment, which we have detailed in Point I, shows that its only purpose was to prevent the undue influence of aggregate wealth on federal elections. The prohibition against expenditures "in connection with" elections must therefore mean for the purpose of influencing the result of elections.

B. *The statute thus has an element of scienter which serves to give definiteness to its scope*

Obviously, if an expenditure must be made for the purpose of influencing an election, the persons

making the expenditure must have a purpose. Hence, although the statute does not use the word willful, *scienter*, purposefulness, is a necessary element of the offense. In no case in which *scienter* was clearly made an element of the offense has this Court held a statute invalid for indefiniteness.[10] And, conversely, in a number of cases the Court has clearly indicated that the presence of such a requirement removes any question as to an act's validity. *United States* v.

[10] Section 4 of the Lever Act was held invalid in *United States* v. *Cohen Grocery Co.*, 255 U. S. 81; *Weeds, Inc.* v. *United States*, 255 U. S. 109; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent was required. But the full text of the Section, as set out in 255 U. S. at 81–82, shows that intent was no part of the clauses under attack.

The accumulation of statutes held invalid in *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, and *Collins* v. *Kentucky*, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purpose *or with the effect* of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221.) [Italics added.]

The statute condemned in *Herndon* v. *Lowry*, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (301 U. S. at 254–255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262), lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached a person, "however peaceful his own intent" (301 U. S. at 262).

Ragen, 314 U. S. 513, 523–524; *Gorin* v. *United States,* 312 U. S. 19, 27–28; *Screws* v. *United States,* 325 U. S. 91, 101–105; *Omaechevarria* v. *Idaho,* 246 U. S. 343, 348; *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497, 502–503. This line of demarcation is entirely reasonable. "The constitutional vice" in an indefinite statute "is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co.* [255 U. S. 81], *supra.* But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws* v. *United States,* 325 U. S. at 101–102. In *United States* v. *Ragen,* 314 U. S. at 524, the Court said with respect to a similar statutory provision: "On no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence."

In this statute, the prohibition against expenditures for the purpose of influencing a federal election has a meaning which, even apart from *scienter,* the ordinary person would have no difficulty in understanding and applying, except in the inevitable border line cases. The necessity that the act be done for the purpose of influencing the election will serve to remove the danger of a person inadvertently involving himself within the border line area. There may be questions of fact for a jury to determine whether a particular expenditure was made for the purpose of influencing a particular election; there may be questions of interpretation as to whether a particular act is or is not an expenditure. But, since the person acting must have the purpose to influence federal elections, the act cannot "become a trap for those who act in good faith" without intending to accomplish the purpose which Congress has declared to be illegal. As this Court said in *United States* v. *Wurzbach,* 280 U. S. 396, 399, in regard to a statute prohibiting solicitation of money from government employees for political purposes: "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States,* 229 U. S. 373."

C. *The possible existence of border line cases does not make a law unconstitutionally indefinite*

All that respondents can point to in support of their claim of indefiniteness is the possible existence of border line cases. Thus it may not always be possible to fix with absolute certainty the moment when a person can be said to be a candidate for office; it may not always be possible to say beforehand whether a particular activity can be deemed to have been undertaken for the purpose of influencing a particular election. But no one who has lived through an election campaign in this country can fail to know the difference between general discussion of political issues which may have a remote effect on an election, and the type of activity, commonly known as electioneering, in a campaign year. And no corporation or labor organization spending money actively to electioneer for the success or defeat of a particular candidate can have any doubt that its activity in such respect contravenes the express prohibition of the statute.

Similarly, as the legislative discussion dealing with newspapers highlights (see *supra*, pp. 45–49), questions may arise as to whether the expenditure of funds by a corporation or a labor organization is an expenditure for the purpose of influencing an election. The sponsors of this legislation have expressed the opinion that, when it is the regular business of an organization such as a newspaper to express views on political mat-

ters, the continuance of such practice during the election period, even though it necessarily involves the expenditure of money and the purpose to influence an election, would not be an expenditure for the purpose of the election (see *supra*, pp. 47–49). The necessity for interpretation as to this particular set of facts does not, however, render the statute constitutionally indefinite. It merely shows that a doubtful case may arise. It is still true that no corporation, not even a newspaper, engaged in active electioneering beyond its regular business could, under this statute, have any doubt that its activities came within the prohibition of the statute.[11]

[11] The necessity for interpretation could arise in this case to the extent that respondents might contend that the expression of political views in their regular newspaper was as much the regular business of the organization as the expression of political views by regularly published daily newspapers. That would be a matter of fact to be developed at a trial. See *United States* v. *Petrillo*, 332 U. S. 1, 11–12. Furthermore, the indictment alleges that funds were expended to print and transport one thousand extra copies of the newspaper in connection with the election. Such extra expenditure would clearly constitute direct electioneering activity within the interdiction of the statute, even if performed by a regular newspaper. (See *supra*, pp. 48–49.) The indictment is, of course, immune from attack on a motion to dismiss, if any of the means of committing the offense charged would, if proved, sustain the charge and uphold a conviction. *Sondericker* v. *United States*, 41 F. 2d 144, 146 (C. C. A. 7); see *Ford* v. *United States*, 273 U. S. 593, in which allegations found not to charge an offense were treated as surplusage. The district court specifically held that the indictment did charge an offense under the Act.

The possibility that border line cases may arise does not render a statute constitutionally indefinite. *United States* v. *Petrillo*, 332 U. S. 1, 7; *Robinson* v. *United States*, 324 U. S. 282, 285–286. As this Court said in the *Petrillo* case,

> That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense.

Clearly there is under this statute a mass of situations to which the statute would unquestionably apply, and as to which the ordinary person would have no doubt of the statute's applicability. It clearly meets the test laid down by this Court in the *Petrillo* case; it [332 U. S. at 7–8]

> provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. * * * The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more.

IV

SECTION 304 DOES NOT ARBITRARILY DISCRIMINATE AGAINST ORGANIZATIONS IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDENT

Respondents' further contention that Section 304 is such an arbitrary discrimination against

labor organizations that it violates the due process clause of the Fifth Amendment is answered by the legislative history of the statute. It is, of course, not true that the act is directed against labor alone; it is directed against corporations as well, and was directed against corporations long before any prohibition was imposed against labor organizations.

In this field, Congress has acted to meet evils as it found them. It has waited until a particular danger seemed to it to become pressing before taking action thereon. Thus, the ban against contributions by corporations was imposed years before limitations were placed on labor organizations because only the use of the aggregate wealth of corporations to influence elections was found to be an evil in the early part of the century. Not until labor organizations became strong enough and powerful enough so that the group in control thereof was able, by the use of the power arising from combination, to exert disproportionate influence on elections, not until Congress had before it evidence of the use of that power to influence elections, did Congress undertake to extend the prohibition theretofore imposed against corporations to labor organizations. Not until Congress had before it substantial evidence that the prohibition against contributions was being evaded by contributions in the form of expenditures did it undertake to prohibit expenditures as well as contributions.

As to the contention that the rationale which supports the ban against corporations and labor organizations would justify the extension of the act to other organizations as well, the answer was given by Senator Taft in the course of the debates on this provision (93 Cong. Rec. 6440):

> * * * if any abuses arise with respect to other organizations we can extend the provision of law to the other groups.

As this Court has said in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 46:

> * * * We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Sproles* v. *Binford*, 286 U. S. 374, 396. * * *

See also *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 471–472, where the Court said:

> The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are subject to the Rail-

> way Labor Act, 45 U. S. C. § 151 *et seq.*, is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Bunting* v. *Oregon*, 243 U. S. 426; *Sproles* v. *Binford*, 286 U. S. 374, 396; cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400, and cases cited. * * *

In *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160, the Court pointed out that a legislature—

> * * * may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81. *Missouri Pacific Ry. Co.* v. *Mackey*, 127 U. S. 205.

See also *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

It should be noted that, as this Court has frequently stated, "Unlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress." *LaBelle*

Iron Works v. *United States*, 256 U. S. 377, 392; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584–585; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400, 401; *Helvering* v. *Lerner Stores Co.*, 314 U. S. 463, 468; *Detroit Bank* v. *United States*, 317 U. S. 329, 337–338; *Hirabayashi* v. *United States*, 320 U. S. 81, 100. Any legislative classification which is not so arbitrary as to deny due process of law will therefore be upheld, and the Court has stated, what the above cases clearly imply, that the due process clause imposes "restraints less narrow and confining" than the equal protection clause. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584.

Certainly, labor organizations are different in character, scope and purpose from other types of unincorporated associations, as the very existence of the Wagner Act and its subsequent modification in the Labor Management Relations Act shows. The legislative history of Section 304 shows that Congress did not extend the act to cover unincorporated associations of employers, the type of unincorporated association most analagous to labor organizations in relation to the purpose of the statute here involved, because it felt that the existing ban against contributions and expenditures by corporations was sufficient to prevent the use of corporate funds for political purposes through the medium of unincorporated associations. (See *supra*, pp. 51–52.) As pointed

out above, the legislative history also shows, that other types of unincorporated associations were not brought under the interdiction of the statute because Congress had not found any danger to the election process from such groups. Under the circumstances, the legislative judgment that only the aggregate wealth of corporations and labor organizations represented a danger to the election process cannot be deemed an arbitrary discrimination in violation of the Fifth Amendment.

As this Court said in *United States* v. *Petrillo*, 332 U. S. 1, 8–9:

> * * * it is not within our province to say that, because Congress has prohibited some practices within its power to prohibit, it must prohibit all within its power. * * * Nor could we strike down such legislation, even if we believe that as a matter of policy it would have been wiser not to enact the legislation or to extend the prohibitions over a wider or narrower area.

Congress has advanced step by step to meet the evils as it found them arising from the use of the aggregate wealth of entities to exercise the whole combined power of the organization in support of the views of those in control which may not represent the views of all the members. It has taken action only where it found danger. That is not unconstitutional discrimination.

CONCLUSION

The judgment below should be reversed.

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APRIL 1948.

U. S. GOVERNMENT PRINTING OFFICE: 1948

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA, APPELLANT

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPENDIX TO BRIEF FOR THE UNITED STATES

LEGISLATIVE REPORTS AND DEBATES ON SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947

PROCEEDINGS IN THE HOUSE

The provision was introduced by Mr. Hartley in the House of Representatives on April 10, 1947, H. R. 3020, 80th Congress, 1st Session, in the following form:

RESTRICTION ON POLITICAL CONTRIBUTIONS

Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940

edition, title 2, sec. 251; Supp. V, title 50 App., sec. 1509), as amended, is amended to read as follows:

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For

the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

The Committee Report on the Labor-Management Relations Act, 1947, to accompany H. R. 3020 by Mr. Hartley, from the House Committee on Education and Labor, Report No. 245, describes this provision on page 46.

> Section 304 places on a permanent basis the provisions which were contained in the War Labor Disputes Act whereby labor organizations were prohibited from making political contributions to the same extent as corporations. In addition this section extends the prohibition, both in the case of corporations and labor organizations, to include expenditures as well as contributions. Moreover, expenditures and contributions in connection with primary elections and political conventions are made unlawful to the same extent as those made in connection with the elections themselves.

A minority of the House Committee made the following report on Section 304. Report No. 245, p. 111.

> 4. RESTRICTIONS ON POLITICAL CONTRIBUTIONS
>
> Section 304 of this bill would place all corporations and labor organizations within the provisions of the Federal Corrupt Practices Act forbidding contributions in connection with any election of the Presi-

dent, Vice President, Representative, or Senator.

This provision poses a serious policy issue as to the desirability of placing this restriction on political liberties in the absence of a clear showing of opportunity for corruption. Furthermore, the restriction is one-sided. While it includes corporations, along with the labor organizations, it does not include officers in either. Thus, in view of the tremendous sums paid to officials of large corporations, it would seem that they are able to contribute to an election fund as individuals, while officials of labor organizations, because of their moderate salaries, would not be able to do so.

Further, it is well to note that the essential purposes of the two types of organizations are not parallel. A corporation of the type in mind here, is an organization for production of goods or rendering of services, organized for profit. The stockholders have a reasonable right to profits and notification of company disbursements. A labor organization is a voluntary organization for the well-being of the individual worker. If he contributes directly to a political party, or if he contributes through a voluntary organization, to facilitate the handling of such sums, the result is the same. Consequently, there seems to be nothing reprehensible in contributions by a union when it is a lump sum made up of small voluntary contributions by indi-

viduals. It is not derived from any profits, such as is corporation contributions.

It would seem to be a dangerous precedent to make unlawful a contribution by a voluntary organization to an election fund. It might well be that if such precedent is followed, in time all organizations, of whatever kind or nature, might be prohibited from such contribution. It is difficult to see the advisability of setting a precedent for a future pattern that could conceivably encompass organizations which are purely charitable, or religious, or fraternal in their nature and aims. Such a restriction upon a voluntary association, a labor organization, composed of individuals of modest means, who by their very association with a labor organization demonstrate their inability to contribute large sums to an election fund has little or no merit.

During the House debates, the following statements relative to Section 304 were made:

(93 Cong. Rec. 3428)

Mr. HOFFMAN. * * * Unfortunately, as so often happens when a law is unfair, the unions prospered unduly under that law. They took in millions of new members. They collected millions upon millions of dollars. Just a little while ago, two years ago, at a convention in New Jersey, the teamsters, Dan Tobin's union, boasted that it had $4,000,000 in cash, that it had $5,000,000 in bonds. It also authorized its

executive board, or rather, its president, Dan Tobin, to spend any part of the $4,000,000 in cash to defeat Congressmen. It forgot the labor field and the employee and dropped over into politics. And some unions and the PAC did their dirtiest to intimidate and coerce Congress and individual Members of Congress.

(93 Cong. Rec. 3522)

Mr. MILLER of California. Mr. Chairman, section 304 of H. R. 3020 deals with restrictions on political contributions. It amends section 313 of the Federal Corrupt Practices Act of 1925 to make it unlawful for a corporation or labor organization not only to make a "contribution" but also an "expenditure" in connection with any election at which Presidential or Vice Presidential electors or a Senator or a Representative in, or Delegate or Resident Commissioner to, Congress are to be voted for. Contributions or expenditures made "in connection with any primary election or political convention held to select candidates for any of the foregoing offices" are likewise made unlawful and punishable by a fine of not more than $5,000 or a fine or imprisonment of officers of the corporation or labor organization who consent to any unlawful contribution or expenditure. The present suggested amendment would make permanent, in broadened form, the restrictions on political contributions by labor organi-

zations imposed by the War Labor Disputes Act of 1943, soon to expire.

There are a number of reasons why I am opposed to this provision of the bill:

First. The prohibition against political activities of unions has no relevancy in a bill purporting to adjust labor-management relations and to minimize industrial strife. The task of investigating contributions and expenditures in Federal election compaigns constitutes a complex and entirely separate field of legislative activity and has been so recognized by the Congress in the passage of Federal Corrupt Practices Act of 1925, and the Hatch Political Activities Act approved August 2, 1939. To inject issues concerning political activities into a bill of the kind now under consideration would harm not help the cause of stabilized labor-management relations.

Second. If such prohibitions are to be imposed upon the political activities of labor organizations, the same prohibitions should be imposed upon employer associations such as the National Association of Manufacturers or the Chamber of Commerce. Similarly, unincorporated organizations should be included within the scope of such prohibitions. If the bill seeks to bring about equality of treatment to management and the associations which represent it in dealing with labor and labor organizations, certainly it would seem inconsistent with the purpose of the bill to

restrict only the political activities of labor organizations.

Third. The evil which the prohibition seeks to correct is in fact nonexistent. The widespread activity of the Political Action Committee of the CIO in the elections of 1943 and 1944 was the signal for a furious campaign against it in the press and in Congress. Demands were made upon Congress for an investigation on the ground that the Corrupt Practices Act as amended by the Smith-Connally Act was being violated. In the midst of this furor the Senate Special Committee to Investigate Presidential, Vice Presidential and Senatorial Campaign Expenditures in 1944 was convened for the purpose of hearing testimony by the chairman of the Political Action Committee. A majority of the special committee found no violation of the Corrupt Practices Act on the part of the Political Action Committee and the Attorney General discovered no violation of the Criminal Provisions Act after investigations initiated at the request of several Members of Congress—Senate Report No. 101, page 23, Seventy-ninth Congress, first session.

Fourth. Even if the evil which is attacked in the bill did exist, the method of prohibitions and sanctions is unsound and unworkable. The special committee established by Senate Resolution 263, Seventy-eighth Congress, second session, after long and careful consideration of the subject

and after hearing much testimony, came to the following conclusion:

The committee as a result of its investigations unanimously came to the conclusion that prohibitions and sanctions had failed to prevent pernicious political activity in Federal elections. They concluded that free and prompt publicity as to campaign contributions and expenses would be more likely to achieve the desired result. Therefore its recommendations as set forth above stress the reduction of prohibitions and the increase of publicity. (S. Rept. 101, p. 83, 79th Cong., 1st sess.)

Fifth. Assuming, however, that the evil did exist and that a prohibition against contributions was a sound method of combating the abuse, the extension of the prohibition beyond contributions to expenditures is an unwarranted limitation on the rights of freedom of speech, press, and assembly. In considering a recommendation for an amendment to section 313 of the Corrupt Practices Act to prohibit not only contributions but also expenditures, a majority of the Senate's special committee on campaign expenditures rejected the recommendation for the following reasons:

The extension of the prohibition to include expenditures would tend to limit the rights of freedom of speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution. The in-

vestigations which the Committee has made brought out the fact that many organizations claiming to be educational are claimed by others to be purely political. The line of demarcation is difficult if not impossible to draw since it depends to a considerable extent upon human motives. An expenditure made in connection with an election may well be for the publication of pamphlets or newspaper articles or speeches justifying the point of view of the organization paying for it. An editorial in a newspaper states its position. The reproduction of that editorial in the form of a pamphlet or a speech based on that pamphlet may state the position of the organization paying for it. Free discussion of political questions should be encouraged, not prohibited. (S. Rept. 101, p. 83.)

Sixth. The effort to restrain labor organizations from using their funds for the support of political parties in England proved to be unworkable. The effect of the decision of the House of Lords in *Amalgamated Society of Railway Servants* v. *Osborne* (1910 A. C. 87) was to restrain a trade-union from using its funds for political activities. Such funds had been used to support the new Labor Party that had counted so heavily in the general election of 1906, but the Trade-Unions Act of 1913 corrected this limitation imposed upon trade-union activities, and funds could thereafter be devoted to the furtherance of political objectives if they had re-

ceived authority for that purpose from the members of the union. Even the restrictive Trade Disputes and Trade-Unions Act of 1937 (sic) following the overthrow of the Labor Government, did not prohibit unions from using funds for political purposes. At most it required an assent from each trade union member as a condition precedent to the legality of a levy upon him for funds for legal purposes. Passage of section 304 of the present bill would mean that we would have taken a more restrictive position against labor organizations in this respect than even the most restrictive piece of British legislation.

Seventh. There is no justification for treating labor organizations on the same basis with corporations for this purpose. The $5,000 limitation by the Hatch Act upon individual contributions to political committees has been ineffective as against corporations because its officers, directors, and members of families having controlling interests in these corporations can afford to make large contributions distributed to a large number of State, local, and independent committees.

Thus we find that 31 members of the du Pont family contributed $109,832.83 to various political organizations for political

(93 Cong. Rec. 3523)

purposes. Five members of the McCormick family contributed $28,000; six Mel-

lon family members contributed $59,500 and nine Pew family members made a total contribution of $96,995.76. See appendix 8, Tabulation of Contributions by Prominent Family Groups, Senate Report No. 101, pages 140–151. Neither wage earners who have associated themselves into a labor organization nor members of their families are in a position to make such contributions for political purposes. The necessary interest of the wage earner in the vital questions of taxation, housing, rent, and price control, full employment, minimum wages, health, education, the elimination of discrimination in employment, and other legislative matters which affect him and his family and in fact the entire community can be expressed effectively only in combination with his fellow wage earners acting through their unions. They alone have the resources and facilities to support measures and candidates which will act in labor's interest so often synonomous with the interests of the community as a whole. Restrictions upon political activity by limiting political contributions of trade-unions creates rather than eliminates a social evil. It should not be injected into the consideration of a bill to adjust labor-management relations.

(93 Cong. Rec. A–3640)

Mr. PACE. * * * Section 304 of the law seeks to prohibit all corporations and

labor organizations from making contributions or expenditures in connection with Federal elections, primaries, political conventions, and so forth. This was not intended by the Congress to prohibit newspapers or the regular publications of employers and labor organizations from publishing freely and full news and views with regard to candidates and elections, and their approval or opposition to condidates. It is reported that the Attorney General is inclined to rule that this section would prohibit the publication of such news and views, and so forth. If such interpretation is correct, then this section would be a serious infringement of the right of free speech and free press, and the Congress should and probably will promptly modify this section accordingly.

The report of the Conference Committee on the disagreeing votes of the two Houses on the Senate Amendments to H. R. 3020, contains the following statement relative to Section 304.

RESTRICTIONS ON POLITICAL CONTRIBUTIONS

Section 304 of the House bill contained a provision placing on a permanent basis the provisions which were contained in the War Labor Disputes Act, whereby labor organizations were prohibited from making political contributions to the same extent as corporations. In addition, this section extended the prohibition, both in the case of corporations and labor organi-

nations, to include expenditures as well as contributions. Moreover, expenditures and contributions in connection with primary elections and political conventions were made unlawful to the same extent as those made in connection with the elections themselves. There was no comparable provision in the Senate amendment. The conference agreement adopts the provisions of the House bill, with one change. Under the conference agreements expenditures and contributions in connection with primary elections, political conventions, and caucuses are made unlawful to the same extent as those made in connection with the elections themselves. As a clarifying change the definition of a labor organization has been set forth in full rather than incorporating the provisions of the National Labor Relations Act. (Report No. 510, to accompany H. R. 3020, pp. 67–68.)

PROCEEDINGS IN THE SENATE

During the Senate debates the following statements relative to Section 304 were made.

(93 Cong. Rec. 6436)

Mr. TAFT. * * * As to the prohibition of political contributions by labor unions, it should be remembered that after the expiration of the Smith-Connally Act, on June 30, the current prohibition of political contributions by labor unions will cease to be a part of the Federal law

unless new legislation is enacted. The Senate passed the Smith-Connally Act and approved it, with that provision in it, by a 2-to-1 vote. That provision was not in the Senate bill and was not considered by the Senate.

* * * * * *

Mr. PEPPER. I have noted that the Senator did not refer to the action which I understand the conference committee took prohibiting expenditures by labor organizations and, of course, expenditures by corporations, for political purposes. The way the provision now reads, as related to labor organizations, as I see on page 67 of the report, it is unlawful for any labor organization to make expenditures and contributions in connection with primary elections and political conventions. Under the conference agreements expenditures and contributions in connection with primary elections, political conventions, and caucuses are made unlawful to the same extent as those made in connection with the elections themselves.

I wish to ask the Senator, if I may, this question: Would the newspaper called Labor, which is published by the Railway Labor Executives, be permitted to put out a special edition of the paper, for example, in support of President Truman, if he should be the Democratic candidate for the Presidency next year, and in opposition to the Senator from Ohio, if he should be the

Republican nominee for the Presidency, stating that President Truman was a friend of labor and that the Senator from Ohio was not friendly to labor? Would that be called a political expenditure on the part of the labor organization?

Mr. TAFT. If it were supported by union funds contributed by union members as union dues it would be a violation of the law, yes. It is exactly as if a railroad itself, using its stockholders' funds, published such an advertisement in the newspaper supporting one candidate as against another. If the paper called Labor is operated independently, if it derives its money from its subscribers, then of course there would be no violation. The prohibition is against a labor organization using its funds either as a contribution to a political campaign or as a direct expenditure of funds on its own behalf.

Mr. PEPPER. Mr. President, will the Senator yield further?

Mr. TAFT. I yield further to the Senator.

Mr. PEPPER. Has the committee given consideration to whether or not that kind of a prohibition would be a denial of the freedom of the press to a newspaper which might happen to be owned by a labor organization?

Mr. TAFT. It is not a denial of the freedom of the press. It applies only if the labor organization operates the paper

and uses union dues for that purpose. We have long prohibited corporations from contributing money to political campaigns. The conference report simply writes into the corporation provision a similar provision affecting labor organizations. As I said, we have long prohibited corporations from contributing money for political purposes, and it was always supposed that the law prevented a corporation from operating newspapers for that purpose or advertising in newspapers for that purpose, until labor organizations were included in the Smith-Connally Act, and then it was said that the law prohibited contributions, but that political advertisements and political pamphlets could be published by the union or corporation itself.

So what we are proposing to do is to subject labor organizations to exactly the same prohibition to which corporations have been subjected, and, so far as I know, including the things which I think the original law covered but regarding which doubt was raised by labor organizations.

Mr. PEPPER. Mr. President, will the Senator yield further?

Mr. TAFT. I yield.

Mr. PEPPER. Does the Senator from Ohio mean to tell the Senate that a corporation owning a newspaper cannot have a free editorial policy to oppose candidates and to oppose political parties according to its own judgment?

Mr. TAFT. Not if it used its corporate funds for that purpose, instead of running a newspaper as a business. If it did it would be prosecuted immediately under the Federal law.

Mr. PEPPER. Does the Senator know how a newspaper published by a corporation can get any money to provide editorials for the paper if it does not get it from the corporate treasury?

Mr. TAFT. They get their money from advertising. They are business concerns operating newspapers. So far as I know no one has ever thought that a corporation could publish a pamphlet for one candidate as against another without violating the Corrupt Practices Act. No one has ever considered that could be done. They could not publish a special newspaper for that purpose under the previous law, because the previous law prohibited any contribution, direct or indirect, in connection with any election at which a man was a candidate for public office. We have not changed the law in that respect. We only make it clear that an expenditure for that purpose is the same as an indirect contribution, which, in my opinion, has always been unlawful.

Mr. PEPPER. I wonder if the Senator, upon reflection, really means that the newspapers of this country which are owned by corporations cannot publish an extra paper if they want to oppose some candidate or cannot put out a whole special edition giving

their view about a political party or a political candidate. That is one of the civil rights in this country. Does not the Senator know that it would be unconstitutional to try to deprive a corporation owning a newspaper of the right of freedom of the press. If that be the correct premise—and I think it cannot be denied that it is—is not the Senator denying to the labor organization which may happen to own a newspaper the right to the same freedom of the press to support or oppose candidates and political parties which other newspapers enjoy? Yet the Senator from Ohio says that the newspaper Labor, published by the 21 railway labor executives, would not be permitted to publish a statement saying that it supported President Truman and op-

(93 Cong. Rec. 6437)

posed Candidate Taft, or vice versa. I say that would be a deprivation of the freedom of the press.

Mr. TAFT. No; I said that union funds could not be used for that purpose. They could conduct a newspaper if they wanted to, just as a corporation can conduct a newspaper. But why should a labor organization be able to publish pamphlets or special newspapers against one candidate or in favor of another candidate, using funds which that organization collected from the union members?

That is what happened in the State of Ohio. The PAC is a separate organization

which raises its own funds for political purposes, and does so perfectly properly. The Smith-Connally Act prohibited the making of contributions by unions to the PAC, yet those unions took the position that they could use their funds for the publication of pamphlets for or against candidates throughout that election, and they evaded the entire law by saying that was not a contribution—not even an indirect contribution—to the candidate who received the benefit of that procedure. That is what this provision of the House bill is intended to reach, if it be agreed to.

Mr. PEPPER. Mr. President, I call the attention of the Senator from Ohio to the following practice of the railway labor executives in the past: If a certain candidate was unfriendly to the interests of labor, they would publish a special edition of their paper and would put that special edition into circulation in the area where that candidate was running for office, and would place it in the hands of labor-union members and also in the hands of the public generally.

Mr. TAFT. That is exactly what they should not be allowed to do.

Mr. PEPPER. Very well; I want it definitely understood that the Senator from Ohio intends to outlaw that privilege on the part of labor. Now that I have that clear——

Mr. TAFT. It is perfectly clear. It is perfectly clear that union funds are not to

be used to interfere in political campaigns and with political candidates, either in favor of one candidate or against another candidate. That same prohibition extends against the railroads for which the union members work. For years the railroads have been prohibited from doing anything of that kind, and this provision would simply extend to labor unions the prohibition which has been applied against corporations for a long time.

Mr. BARKLEY. Mr. President, will the Senator yield to me?

The PRESIDING OFFICER. (Mr. Wiley in the chair.) Does the Senator from Ohio yield to the Senator from Kentucky?

Mr. TAFT. I yield.

Mr. BARKLEY. Suppose the particular publication referred to by the Senator from Florida is published and paid for by subscriptions paid to the publication by the membership of that railway labor organization?

Mr. TAFT. That will be perfectly lawful. That is the way it should be done.

Mr. BARKLEY. And suppose it is not paid for by union funds collected from the various labor unions?

Mr. TAFT. That will be perfectly proper.

Mr. BARKLEY. Would that still be prohibited?

Mr. TAFT. No; it would not be.

Mr. BARKLEY. The Senator has referred to the law which now prohibits corpora-

tions from making contributions to political campaigns.

Mr. TAFT. That is not the way the law is now.

Mr. BARKLEY. The Senator from Ohio referred to the law prohibiting the making of direct or indirect contributions by corporations as a justification for making the same provision in the case of labor unions. Let us consider the publication of a corporation which, day after day, takes a position against one candidate and in favor of another candidate, and does so in its editorials. The editorials occupy space in that newspaper or publication, and the space costs a certain amount of money. Is that a direct or an indirect contribution to a campaign; and if it is neither, what is it?

Mr. TAFT. I would say that is the operation of the newspaper itself.

Mr. BARKLEY. That is true; it is the operation of the newspaper. But I gathered the impression that in referring to the present law prohibiting the making of contributions, directly or indirectly by corporations, the Senator inferred that if a corporation publishes a newspaper—as most of them do—and uses the editorials in that publication in advocacy of or opposition to any candidate, at least that is a direct contribution to the campaign. It could not be anything else.

Mr. TAFT. I do not think it is either a direct or an indirect contribution. I do

not think it is an expenditure of the sort prohibited, because it seems to me it is simply the ordinary operation of the particular corporation's business.

Mr. BARKLEY. None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate.

Mr. TAFT. That is correct.

Mr. BARKLEY. Yet the Senator from Ohio is saying that law is applicable to corporations, and is saying that that is a basis for doing the same thing with respect to labor organizations which may publish newspapers.

Mr. TAFT. It never has been applied to newspapers. I say that under the Smith-Connally Act I do not think a labor organization itself should be permitted to use union funds to make such a contribution. I do not think that would be permitted under the provision to which we are now referring. I think it was clearly unlawful under the Smith-Connally Act.

As a matter of fact, the investigating committee of which the Senator from Rhode Island [Mr. Green] was chairman, requested the Attorney General to bring suit to determine the meaning of these words. I think the committee took the position that such a direct expenditure by a labor union was illegal under the Smith-Connally Act, and directed the Attorney General to bring suit to determine that

question. But the Attorney General always avoided bringing such a suit, and failed to do so.

In my opinion, the word "contribution" covers the direct expenditure of money for the same political purpose. But in order to make that matter perfectly clear, the House inserted the word "expenditure" in this measure.

Mr. BALL. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. BALL. Two years ago, I was a member of the committee which was headed by the Senator from Rhode Island [Mr. Green], as I recall. We ran into expenses on the part of corporations, as well as unions, in cases in which by making direct expenditures, as well as contributions, they certainly violated the spirit and intent of the Corrupt Practices Act. I know of one newspaper in my section of the country which makes a practice of printing hundreds of thousands of special reprints and sending them into various States, to influence the elections. I think that is prohibited, just as the practice of the labor paper to which the Senator from Florida has referred—the sending of a special edition of 200,000 or more copies into a State—would also be prohibited.

Mr. TAFT. I would say the word "expenditure" does not mean the sale of newspaper for money for their worth. If they are sold to subscribers and if the newspaper

is supported by subscriptions, then I would not say that constituted such an expenditure. But if the newspapers were given away—even an ordinary newspaper—I think that would violate the Corrupt Practices Act. That act would be violated, it seems to me, if such a newspaper were given away as a political document in favor of a certain candidate. I think that would have been so under the present law, and I think we make it more clearly so, perhaps, by this measure.

Mr. BARKLEY. Mr. President, let me ask the Senator this question: Let us suppose a labor organization publishes a newspaper for the information and benefit of its members, and let us suppose that it is published regularly, whether daily or weekly or monthly, and is paid for from a fund created by the payment of dues into the organization it represents. Let us assume that the newspaper is not sold on the streets, and let us assume further that a certain subscription by the month or by the year is not charged for the newspaper. Does the Senator from Ohio advise us that under this measure such a newspaper could not take an editorial position with respect to any candidate for public office without violating this measure?

Mr. TAFT. If it is supported by union funds, I do not think it could. If the newspaper is prepared and distributed and circulated by means of the expenditure of

union funds, then how could a line be drawn between that and political literature or pamphlets or publications of that nature? It is perfectly easy for a labor union to publish lawfully a bona fide newspaper and to charge subscriptions for that newspaper, either by itself or as a corporation.

Mr. BARKLEY. So if there is a labor organization which is publishing a newspaper—not as a political newspaper, but for the benefit of its members—and if

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the expenses of that publication and distribution are paid from the funds raised by means of the payment of dues, and if all members of the union understand that a certain portion of their dues goes to the publication of that newspaper, then in order for that newspaper to take any position with respect to any candidate, it would have to charge a subscription by the month or by the year, in order that it might express its views in that respect; is that so?

Mr. TAFT. I am inclined to think so, just as a corporation gets out regular house organs to its members, and if that corporation interferes in a political election through one of those house organs it violates the Corrupt Practices Act. In my opinion, that has been unlawful for years, so far as that is concerned. No corporation in this country would dare to do it under the Corrupt Practices Act which has been in force for many years.

Mr. BALL. Mr. President, will the Senator from Ohio yield?

Mr. TAFT. I yield to the Senator from Minnesota.

Mr. BALL. In the case of most union papers, as I understand, the subscriptions from the union members are collected along with the dues, but they are an earmarked portion of the dues which the union collects and remits to the paper in the form of subscriptions. I take it that would be in a different category from the case where the union makes a blanket subscription and an appropriation out of union dues.

Mr. TAFT. I think if the paper is, so to speak, a going concern, it can take whatever position it wants to.

Mr. PEPPER. Mr. President, will the Senator from Ohio yield?

Mr. TAFT. I yield to the Senator from Florida.

Mr. PEPPER. Suppose there were a case where a number of corporations associated themselves together into an organization we will call the National Manufacturers Association, and suppose the funds of that organization are altogether contributed by corporate memberships. Is that organization, under this section, forbidden to publish any pamphlet, or send any telegrams, or make any telephone calls, or incur any expenditures, in respect to any political election of any party, or any candidate, or any caucus, or any convention?

Mr. TAFT. I think it would be. It would be a general conspiracy, I think, and would be a clear violation by all the corporations which contributed the money. Such an association could receive money by direct contributions from individual members, just as the CIO-PAC can properly operate as a political organization, raising its funds from individual members. In the same way the National Manufacturers Association could do the same thing. But no corporation could contribute to the National Manufacturers Association, and no labor union could contribute to the PAC.

Mr. PEPPER. The Senator is using the word "contribute." My reason for emphasizing this matter is that the conference committee has added two very important and I think very significant words. The old law, the Smith-Connally law, which has been reenacted, prohibited only contributions, but the proposed law prohibits a contribution "or expenditure" without any definition of "expenditure." That means a dollar, or 50 cents, or $500 or $1000.

Will the distinguished Senator from Ohio yield for another question?

Mr. TAFT. I yield.

Mr. PEPPER. Suppose a labor union felt that a candidate for office was unfair to labor, and that labor union wished to put out a pamphlet to advise its members about the labor record of the candidate. I ask the Senator from Ohio whether that would be forbidden as an expenditure by a labor

organization in respect to a candidate or an election, under the proposed act?

Mr. TAFT. Yes, I think it would be.

Mr. PEPPER. So a workingman's organization would be deprived the power even of advising its membership of the antilabor record of a man who might be a candidate for public office?

Mr. TAFT. Correct. Let me read the Senator the act which has been in force right along:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political officer, or for any corporation whatever, or any labor organization to make a contribution in connection with any election"——

To make a contribution in connection with any election——

"at which Presidential and Vice Presidential electors or a Senator or Representative in Congress * * * are to be voted for."

That is the existing law.

Mr. PEPPER. It did not include the word "expenditure."

Mr. TAFT. No, it did not include the word "expenditure"; but what would the law mean if a corporation or a labor organization were prohibited from contributing to candidate X, but in spite of that, could issue its own papers, could print its

own pamphlets, and issue them in behalf of candidate X?

Mr. PEPPER. The Senator is overlooking the distinction that exists in every corrupt practice act I know anything about. When in our several States we run for the office of Senator we are limited to the amount of contributions we personally make, or are responsible for, but if I have a friend in the southern part of the State, who wants to put out some pamphlets for me, and distribute them over the community, he has a perfect right to do so.

Mr. TAFT. If the Senator had had a friend who was a corporation and had done that, the corporation officials would have been in jail long ago.

Mr. PEPPER. Yes; but if one of the corporations owns a newspaper, directly or indirectly, that is just what they are doing all the time.

Mr. TAFT. They have been able to sell legitimate newspapers and distribute them without question. They do not distribute corporation funds for that purpose.

Mr. BARKLEY. Mr. President, will the Senator from Ohio yield?

Mr. TAFT. I yield.

Mr. BARKLEY. In the interest of clarification, because I am assuming the Senator understands his own bill——

Mr. TAFT. It is a House bill.

Mr. BARKLEY. And the Senator always gives me a frank answer—inasmuch as the National Association of Manufacturers has

been mentioned, and the United States Chamber of Commerce, and, I might add, the Automobile Chamber of Commerce, I submit that the National Association of Manufacturers does not manufacture anything, the United States Chamber of Commerce does not sell anything, and the Automobile Chamber of Commerce does not manufacture or sell anything. All their funds are contributed by individual members, by way of corporations, who belong either to the National Association of Manufacturers, the United States Chamber of Commerce, or the Automobile Chamber of Commerce. They do not contribute their funds to these organizations primarily for political purposes. But suppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper, and advertised for or against some candidate, or the United States Chamber of Commerce did the same thing, or the Automobile Chamber of Commerce did the same. Would they be prohibited, under the present law, or under the conference bill, out of funds contributed by corporations into the general fund of the association, from buying newspaper space to advocate or oppose a candidate for public office, directly or indirectly; and when I say "indirectly," I mean use the space in order to advocate certain things advocated by some candidates or opposed by other candidates, without mentioning the names of the candidates.

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Mr. TAFT. Of course, if the Chamber of Commerce were a corporation, as I think it is, it would be clearly illegal. In any event, so long as the money comes from corporations, and with their knowledge, I think it would be clearly illegal anyway, and they would be participating as corporations in spending for political purposes.

Mr. BARKLEY. I understand these organizations have a regular schedule of dues which are paid into the general fund by constituent members. They are not collected for political purposes, but I recall that last summer there were widespread advertisements in the newspapers of the United States, consisting of whole pages, under the names of some of these organizations. I do not know to what extent they affected anyone's vote, but they definitely had an indirect effect, and I have no doubt that they cost hundreds of thousands of dollars. Was that a violation of the law?

Mr. TAFT. The question there would be whether or not it was in connection with a Federal election.

Mr. BARKLEY. Those advertisements were very skillfully drawn, and they had no specific reference to anyone's candidacy.

Mr. TAFT. The language of the law is: "for any corporation or any labor organization to make a contribution or expenditure in connection with any election at which Presidential candidates are

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to be voted for." The question would be whether it was in connection with such an election.

As to the association itself, it seems to me the conditions are exactly parallel, both as to corporations and labor organizations. Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that. If the National Association of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organiza-

tions were included, that question was raised. In order that it might be finally resolved in this bill, we made it perfectly clear that it covers either a contribution to somebody else or an expenditure of one's own funds for the same purpose, in connection with an election.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. TAFT. I yield to the senator from Florida.

Mr. PEPPER. I wanted to be sure I understood the Senator about the association. If the members of a trade association are all corporations, although they make no contributions to anyone's campaign fund, would the association be able to use its funds for any political expenditure?

Mr. TAFT. In my opinion, they would be participating in the expenditure by those corporations of funds for political purposes and would violate the law.

Mr. PEPPER. Will the Senator allow one other question?

Mr. TAFT. I yield.

Mr. PEPPER. Does what the Senator has said in the past also apply to a radio speech? If a national labor union, for example, should believe that it was in the public interest to elect the Democratic party instead of the Republican party, or vice versa, would it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would

express to the people the point of view of that organization?

Mr. TAFT. If it contributed its own funds to get somebody to make the speech, I would say they would violate the law.

Mr. PEPPER. If they paid for the radio time?

Mr. TAFT. If they are simply giving the time, I would say not; I would say that is in the course of their regular business.

Mr. PEPPER. What I mean is this: I was not assuming that the radio station was owned by the labor organization. Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

Mr. TAFT. Yes.

Mr. PEPPER. He would be denied the right to do that?

Mr. BARKLEY. Mr. President, may I ask the Senator one other question?

Mr. TAFT. I yield to the Senator from Kentucky.

Mr. BARKLEY. Suppose a certain corporation, for instance, the corporation that makes Bayer aspirin, or Jergens lotion, or any other well-advertised product, employs

a commentator to talk about various things, winding up with an advertisement of the product, and suppose that the radio commentator from day to day takes advantage of his employment or his sponsorship to make comments which are calculated to influence the opinions of men or women as to political candidates. Would the corporation sponsoring the particular commentator be violating the law?

Mr. TAFT. I should have to know the exact facts. If, for instance, apart from commentators and the radio, and taking the case of a paid advertisement, suppose a corporation advertises its products, and that every day for 2 weeks before the election it advertises a candidate, I should say that would be a violation of the law. I would say the same thing probably would be true of a radio broadcast of that kind, under certain circumstances, but I think I should like to know the exact facts before expressing an opinion.

Mr. BARKLEY. In the case of a commentator who is paid to advertise a certain product, and who in the course of his 15 minutes on the radio may also seek to influence votes, the sponsor may say, either before or after the broadcast, that he is not responsible for what the commentary says; yet he is paying the commentator for his broadcast. Would that still be a violation of law, although the sponsor might excuse himself or attempt to excuse himself by saying he was not responsible for

the opinions expressed by the commentator?

Mr. TAFT. I think there are all degrees. It would be for a court to decide. I think as a matter of fact, if that had happened under the old law, there would have been the same question.

I want to make the point that we are not raising any new questions here. Those same questions could have been raised with respect to corporations during the past 25 years. It is a question of fact: Was the corporation using its money to influence a political election?

Mr. BARKLEY. We are rewriting, or substantially rewriting, the National Labor Relations Act and also the Corrupt Practices Act. Nobody can tell how things are going to be interpreted in the future.

Mr. TAFT. I may say that the amendment is in exactly the same words which were recommended by the Ellender committee, which investigated expenditures by Senators in the last election. That committee, Republicans and Democrats, in connection with the bill which was introduced by the Senator from Louisiana (Mr. Ellender), used exactly the same words that are found in the amendment; so that this is nothing new. A debate similar to this took place on the Smith-Connally Act. In this instance the words of the Smith-Connally Act have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a

matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If "contribution" does not mean "expenditure," then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee, in the Ellender bill.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. TAFT. I yield to the Senator from Washington.

Mr. MAGNUSON. As I understand, the wording as it applies to labor unions and corporations is now the same. Is that correct?

Mr. TAFT. Exactly; yes.

Mr. MAGNUSON. But the conference committee have added to both the word "expenditure"?

Mr. TAFT. The Senator is correct.

Mr. MAGNUSON. In order to determine the meaning of that, let us assume a concrete example. The International Brotherhood of Teamsters have a newspaper, which they have published for many years. It has a circulation of probably 200,000. It is distributed to members. On the newstand,

no price appears on it. No advertisements are accepted. Under this prohibition, would they be prohibited in the future from mentioning in their editorial columns, for their regular circulation, without adding anything additional, the support of a certain candidate or a certain political party?

Mr. TAFT. We discussed that. We discussed the question of whether or not that newspaper was supported in effect by contributions of corporations or labor organizations, or was paid for by the people who received it. If the latter, I do not think it was an expenditure of union funds or contributions, but if the union simply takes the union funds and publishes a newspaper and uses it as a

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political organ in an effort to elect or to defeat one man that is prohibited.

Mr. MAGNUSON. As a practical matter what happens in these cases I will say to the Senator from Ohio, is much like what happens when one joins a lodge. The lodge dues include for the most part subscriptions to a lodge paper. The same is true with many labor groups. They publish so-called labor organs, and a part of a member's dues goes to subscribe for the labor organ. If such an organ were not published the member's dues would be correspondingly less. The amount which would otherwise go to pay for a subscription to the organ would

be subtracted. But now unions collect the subscription along with the dues.

Mr. TAFT. The case is the same as the case of a corporation house organ. A corporation house organ is published and sent out to employees, sometimes many thousands of them. A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law, in my opinion. Such a law has been in existence 25 years. What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exists with respect to corporations.

Mr. MAGNUSON. Teamsters' unions publish newspapers dealing with matters in which such unions are interested. The same is true of many other unions. If the pending measure become a law, from now on such unions will be prohibited from advocating in their newspapers the support of any political candidates.

Mr. TAFT. That is correct, unless they sell the papers they publish to their members, if the members desire to buy them. In such a case there would be no expenditure for such a purpose of union funds.

Mr. MAGNUSON. Let us consider the teamsters. Suppose they have a weekly radio program, as, indeed, they have had for a long time back. Or let us say the AFL has such a radio program. Let us assume I am running for office and they ask me to be a guest on their program. Suppose I talk

on the subject of labor and do not advocate my own candidacy. Nevertheless I am on that program. My name is being advertised, and I am being heard by many thousands of people. Would that be an unlawful contribution to my candidacy?

Mr. TAFT. If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.

Mr. MAGNUSON. They are not paying me anything. They have asked me to be a guest.

Mr. TAFT. I understand, but they are paying for the time on the air. Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

Mr. MAGNUSON. Let us take the reverse situation. Suppose the General Electric Co. asked me to be its guest on its Sunday afternoon hour to talk about electrical matters. I am running for office at the time. I am introduced on their program.

Mr. TAFT. Oh, the Senator is running for office at the time?

Mr. MAGNUSON. Yes.

Mr. TAFT. O, I do not think that would be a contribution.

Mr. MAGNUSON. It would not be.

Mr. TAFT. There are many useful things done which do not represent contributions. Many Senators like to obtain publicity, and all sorts of indirect aids are given which cannot properly be said to be political contributions or expenditures. In each case the question of fact must be decided.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. BARKLEY. The Senator does not mean to say, does he, that anything that would contribute to the election of the Senator from Washington to the Senate would not be a valuable contribution.

Mr. TAFT. It would be contribution to the Senate, but perhaps not to the Senator from Washington.

Mr. MAGNUSON. Mr. President, if the Senator will yield, let me ask him another question. All the funds of labor unions come from dues paid by their members. All the activities of the unions are based upon expenditure of funds provided by dues. That money is in the union's treasury. If the pending bill should become law it would mean that all labor organs which are now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, men-

tioning his name, or endorsing him for public office?

Mr. TAFT. No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such a newspaper, or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose.

Mr. MAGNUSON. I think all union members know that a part of their dues in these cases go for the publication of some labor organ.

Mr. TAFT. Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute, without being asked to do so specifically,

and without having a right to withdraw their payments, to the election of someone whom they do not favor? Assume the paper favors a Democratic candidate whom they oppose or a Republican candidate whom they oppose. Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked to contribute directly to the support of a newspaper or to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders.

Mr. MAGNUSON. I do not question why they should do this or should not do that. I am trying to find out what practical effect the provision may have on existing labor organizations. Let me ask the Senator from Ohio a further question. Would the provision in any way deny the right of a religious organization to publish pamphlets in behalf of a candidate because, let us say, the organization supported him on moral grounds?

Mr. TAFT. If the organization is a corporation, I assume it could not do so directly. If the organization publishes religious papers that it can sell, that is all right; but the organization cannot take the church members' money and use it for the purpose of trying to elect a candidate or defeat a candidate, and they should not do so.

Mr. MAGNUSON. Would the Anti-Saloon League, for example, be prohibited from issuing pamphlets against a political candidate?

Mr. TAFT. As I understand, the league would probably receive contributions from individuals, and it would be like the PAC or any other organization which was organized for political purposes.

Mr. MAGNUSON. The Anti-Saloon League could use the dues paid by its membership to publish a pamphlet in behalf of a certain political candidate?

Mr. TAFT. Mr. President, I must know the circumstances before I can pass upon the question. Different circumstances may arise in different cases. Any unincorporated organization can collect money from individuals for almost any purpose, and if the individuals who pay the money agree, the money can be used for purposes designated by the organization. There is no prohibition against using such money for political purposes.

Mr. MAGNUSON. My point is that all other organizations except corporations

and labor unions can use the dues of their membership to publish any sort of pamphlet or publication on behalf of a candidate for public office.

Mr. TAFT. What kind of an organization does the Senator mean? Is it incorporated? Where does it obtain its money? All sorts of questions arise in

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every case, and I cannot answer without knowing the circumstances.

Mr. MAGNUSON. I said any organization but corporations and labor unions can do such things, but they are prohibited to those two organizations.

Mr. TAFT. Yes, that is correct, and if any abuses arise with respect to other organizations we can extend the provision of law to the other groups.

(93 Cong. Rec. 6445)

(Excerpts from summary by Senator Taft of the provisions of the bill.)

Restrictions on political contributions: The House bill contained a provision making permanent the provisions which were contained in the War Labor Disputes Act whereby labor organizations were prohibited from making political contributions to the same extent as corporations. In addition, this section extended the prohibition, both in the case of corporations and

labor organizations, to include expenditures as well as contributions. Moreover, expenditures and contributions in connection with primary elections and political conventions were made unlawful to the same extent as those made in connection with the elections themselves.

There was no comparable provision in the Senate amendment. The conference agreement in Section 304 adopts the provisions of the House bill, with one change. Under the conference agreement, expenditures and contributions in connection with primary elections, political conventions, and caucuses are made unlawful to the same extent as those made in connection with the elections themselves. As a clarifying change, the definition of a labor organization has been set forth in full rather than incorporating the provision of the National Labor Relations Act.

(93 Cong. Rec. 6446)

Mr. TAYLOR. I should like to ask the Senator from Ohio a question. In two sessions of the Congress I have introduced a bill providing for the printing of the voting records of Senators and making them available to the people on the payment of their actual cost. The bill has gotten no place. It has not been reported. We are not going to permit a labor union to print the voting records

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of Senators. How are people to find out how we voted?

Mr. TAFT. Surely the Senator has something besides labor organizations in the State of Idaho. He must have other friends. Any individual friends of the Senator can publish the same thing. The question merely is whether in political campaigns we are going to permit labor unions or corporations to use funds which they have accumulated for some other purpose to elect or to defeat a presidential candidate.

Mr. BALL. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. BALL. I do not think there is a single thing in the bill which prohibits any union or corporation or anyone else from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information.

Mr. TAFT. I was thinking of the way most of the labor organizations are on record. They do not, as a rule, merely print facts.

Mr. BALL. The Senator was thinking of the PAC?

Mr. TAFT. Yes.

Mr. TAYLOR. Mr. President, will the Senator yield further?

Mr. TAFT. I yield.

Mr. TAYLOR. I should like to return to the question, because I think it is important. Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?

Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.

Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.

Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election.

Mr. TAYLOR. I should be happy to have him mention my name at any time, in any capacity, good or bad. There will be some

very fine definitions required. I am afraid we shall wind up with our radio commentators absolutely hamstrung if they are sponsored by anyone.

* * * * * *

Mr. KILGORE. Getting back to the subject of radio broadcasting about which we have been talking, I note that the bill uses the words "employer associations," "corporations," and "national banks." I am wondering if an association such as the National Manufacturers' Association, the National Coal Association, or the Association of American Railroads, could sponsor radio broadcasts or advertise in a political way on behalf of the political program. All advertising of that nature is not necessarily for a candidate. It may be for the platform of a party, or something of that nature.

Mr. TAFT. The question is, again, a question of fact. We have had a law against contributions by corporations for years.

Mr. KILGORE. I realize that.

Mr. TAFT. The question as to whether it is in connection with an election I suppose depends on how close it is to the election; how closely it is tied in with something which is a direct issue of the election. It is a question of fact in each case. We did not change the law in that respect.

Mr. KILGORE. I fear I did not make my question clear. Organizations such as, let us say, the National Coal Association, the National Association of Manufacturers,

and other similar organizations are not corporations. It is true that they have both individual and corporate members.

Mr. TAFT. When that question was asked here before, I answered it by saying that if an association of manufacturers accepts contributions from corporations and others that violate the laws by making contributions for political purposes, I think it will be an accessory with those corporations and will be liable under the act. I stated that before as my opinion.

Mr. KILGORE. I know the Senator from Ohio did. But suppose the association makes annual assessments on each member, be he either an individual or a corporation, and sponsors a radio program of the sort we are discussing.

Mr. TAFT. I still think that would be the use of funds for political purposes; that would be contributing and assisting in that general result.

Mr. KILGORE. Of course, that was the opinion of the committee.

Mr. TAFT. Yes; and it is my opinion. The same thing is true, let us say, of the PAC, if the PAC collects funds from labor unions, rather than from individuals.

Mr. KILGORE. Yes.

Mr. TAFT. The PAC has ordinarily collected its funds from individuals.

Mr. KILGORE. Yes.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. PEPPER. I wish to ask the Senator from Ohio whether he agreees with the Senator from Minnesota [Mr. Ball], who just expressed the opinion that if a labor organization used its funds to disseminate the voting record of a candidate for office, during the time of the campaign, that would not be unlawful. Does the Senator from Ohio agree with the Senator from Minnesota that that would not be unlawful, because it would not be an expenditure in connection with an election in which certain candidates or political parties are involved?

Mr. TAFT. I think it would depend upon all the circumstances in the case. If it was merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects, and was not colored in any way, I would rather agree with the Senator from Minnesota. But I think it would depend, in each case, on the character of the publication.

Mr. PEPPER. Of course, the language is "in connection with." The provision does not contain any statement as to whether the statement is colored or not. The words simply are "any expenditure in connection with an election." I do not see how the Senator could say that the publication of a voting record, in the midst of a campaign, was not an expenditure in the midst of an election.

Mr. TAFT. That is not a very practical question, because no one would do just that. Either it is an argument for him or against him, or it is not.

Mr. MURRAY. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. MURRAY. I should like to inquire what would be the situation in a case in which an industrial organization has a chain of newspapers which obviously are operated for political purposes,

(93 Cong. Rec. 6448)

and which have a deficit at the end of each year, which is made up by the corporation, the newspapers being used for purposes of advancing the political interests of the corporation, influencing elections, and advocating the election of certain favored candidates. What would be the situation in such a case, under this provision of the bill we have been considering?

Mr. TAFT. I think that corporation had better be careful. It is a more difficult case to prove, as the Senator realizes, because the contribution is indirect. But if I were an attorney for such a corporation, I would advise that corporation to be very careful, and that it might very easily be found to be violating the law.

Mr. MURRAY. Of course these corporations are very well versed in the legalities, and generally they organize such news-

papers as separate independent corporations. So it is very difficult to discover just who is operating them, what their expenditures are and where their financial support comes from.

For instance, I made inquiry from the Securities and Exchange Commission in an attempt to discover the status of a great string of newspapers in my State. I wished to learn where the money comes from for their operation and how it is expended and who pays the deficiency. But I could not get any information from that source. It will be very difficult to discover what the real situation is in such cases.

Yet great corporations can operate in that manner, whereas a labor union publishing a newspaper, will not under this bill be able to carry any information to its members in connection with the elections, either by printing the records of the candidates or advocating the election of certain candidates.

Mr. TAFT. Those are questions which may be difficult of proof, just as it may be difficult to prove who may be paying the deficits of the Daily Worker. Those things are always defects in any law. But I think if they were actually pinned down and proved, they probably would be found to be violations of the law. That would be my impression.

Mr. MURRAY. But of course it is obvious that the unions would be at a great disadvantage under this bill, because these large

corporations can control all the weekly newspapers throughout a State, by placing lucrative advertisements with them. That is a practice in Montana and many other States. The corporations can give contracts for advertising purposes to all the weekly newspapers, and thus can have their support in the elections and in the campaigns involving economic issues. Under this provision, the unions will be entirely confined to publishing newspapers that do not carry any information or propaganda advancing their interests.

Mr. TAFT. Probably the Senator from Montana saw that the American Federation of Labor has announced the spending of $1,500,000. So it is not wholly without funds to advertise in opposition to the measure which is now before the Senate.

So apparently large sums of money are available on both sides.

The PRESIDING OFFICER. The question is on agreeing to the conference report on House bill 3020.

Mr. Morse obtained the floor.

Mr. MAGNUSON. Mr. President, if the Senator from Oregon will yield to me, I should like to make a brief statement on the point which has just been under discussion. Much has been said to the effect that the purpose of this measure is to equalize the opportunities of corporations and labor unions. The provision we now are considering makes the situation entirely unequal, as the Senator from Montana has

pointed out. As he has stated, a string of newspapers is operated in his State, and most of them operate at a deficit. In many cases the deficit is made up by a large corporation that is up to its ears in politics all the time. Those newspapers can be published for 365 days a year and can be absolutely under the direct control of that large corporation, and can make deprecatory statements about the candidates for public office, and can do so as much as they wish to do, whereas the union, which obtains its funds only from dues paid by the union members, will not be able to engage in such activities. Of course, the union could obtain voluntary contributions for that purpose, but it is very difficult to operate a newspaper day in and day out on the basis of voluntary contributions. So in such a case the unions will be penalized, and so will similar organizations which collect their money from dues. A labor organization presumably is a collection of individuals for non-profit purposes, whereas a corporation is set up for profit, and we have always considered the two to be different.

Let us consider the National Grange, for instance. I do not think it should be denied this privilege. It obtains its funds by means of the collection of dues. The National Grange or the national cooperatives or any other national organizations which obtain their funds by means of the payment of dues will be able to use those

dues to put out all the political propaganda they wish to put out, whereas a labor union, which also is a collection of individuals, presumably for nonprofit purposes, will not be able to do so.

Thus we see that in this case the pendulum has swung too far the other way. I do not deny that in some cases it is necessary to equalize the two relative positions, but surely this proposal is a blow against the right of labor-union members to express their will through their own voluntary organization. It will be practically impossible for labor-union members to do so, whereas the corporations will be able to do so by various means, and they have done so in times past.

If this measure becomes law, it will mean that the voices of corporations in politics in the United States will be far stronger than the voices of labor unions. In itself, that is sufficient basis for a veto of this measure.

Mr. MORSE. I thank the Senator from Washington [Mr. Magnuson] for his excellent contribution to this debate. I agree with him completely. I can well imagine why the politicians who are so strong for this bill want to prevent labor unions from participating in political campaigns. However, such attempts to weaken the political strength of labor will only serve to make the workers of this country more convinced than ever that

they must take a very active part in politics if they are to protect their rights and freedoms.

Mr. PEPPER. Mr. President, if the Senator will yield to me for a moment, let me say that the provisions of this measure overlook the essential differences between corporations and labor unions. A corporation is a person, but is not a citizen, under the laws of the United States. A corporation is entitled to the protection of its property, but it cannot vote, because it is not a citizen, in the sense that a person is a citizen. A labor union is not a corporation, it is simply an unincorporated association of people. In legal character, it is no different from a lodge, or a church, or the WCTU, or any other organization of human beings who get together to further their common good. Therefore, when labor unions are working together, through their own instrumentalities, they are simply working for the furtherance of the welfare of citizens of this country; and citizens were not created to make money. That is the reason why corporations are created.

I should just like to have leave to quote, as I quoted once before, what the late Chief Justice Taft said about labor unions:

"Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus

recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was, nevertheless, unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

Mr. President, this prohibition, therefore, is denying to citizens of this Nation the right of free press, the right of free speech, the right of disseminating information of public value. It is a chain upon the citizens' activity, and we well know that these labor organizations are composed of working people. They do not have people who are their members who can contribute hundreds of thousands or millions of dollars to political campaigns. They have to do it collectively. So they are denied the privilege of collective expres-

sion in political campaigns and are being discriminated against in favor of the corporations of the country.

Mr. MORSE. The Senator from Florida [Mr. Pepper] is right in what he says. This bill is a device for making unions so weak that they cannot carry on effective collective bargaining.

(93 Cong. Rec. 6522)

Mr. PEPPER. * * * Mr. President, I now pass on to the subject we discussed here yesterday, namely, restrictions on political contributions. I am almost disposed to designate that section as the "political insurance section of the Republican Party," because it looks a little as if the Republicans, who are claiming the authorship of this legislation, would like very much to be protected against the circulation by the labor unions of material and information crediting them with the responsibility for this legislation. If this is good legislation, I should think the widest dissemination of knowledge about it would be in the public interest; yet, as the Senator from Ohio advised us yesterday, the railway labor executives at the present time, publishing, with their money, a newspaper called Labor, accustomed to put out a special edition of that newspaper, if they want to, in a political campaign could not put out such a paper, because it would be an expenditure which is prohibited under the provision of

this section. Now, I want to read section 313:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution"—

Such contribution was forbidden by the Senate bill, but the conferees have added the words all the way through in this section—

"or expenditure"—

That is very important—

"in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section."

Furthermore, the Senator from Ohio said yesterday that Mr. William Green could not go on the radio if he wanted to, next year in the presidential election, if the able

Senator from Ohio should be the Republican nominee, and President Truman who, I hope, will veto this bill—should be the Democratic nominee, and say "I call on the workers of America to vote for the Democrats, because they are friends of labor." Under section 313 he could be put in jail if he tried to do that. Not only that, but the Senator from Ohio said yesterday that he could not print and disseminate among his friends a pamphlet telling them to vote for Democrats. Oh, no; he could not use any union dues in that way.

Again, Mr. President, the Senator from Ohio is considering a group of citizens banded together for their common benefit as he would consider a corporation created for profit, and he is treating the person who is a citizen like the heartless corporation that may sometimes be considered a synthetic person. So it is rather striking that the Republicans think no higher of a citizen than they do of a corporation, in respect of his rights and privileges.

Mr. TAFT. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. TAFT. I want to point out again that this is word for word the bill recommended by the Democratic Committee on Campaign Expenditures, which examined the campaign expenditures last year, headed by the distinguished Senator from Louisiana, with the distinguished Senator, I think, from

Oklahoma [Mr. Thomas], and one other Democratic Senator, besides the Senator from Louisiana [Mr. Ellender], and the Senator from South Carolina [Mr. Maybank].

Mr. ELLENDER. And the Senator from South Carolina [Mr. Maybank].

Mr. TAFT. And the Senator from South Carolina [Mr. Maybank]. They recommend exactly this provision in a separate bill now pending before the Senate, so that it can hardly be said to be of purely Republican origin.

Mr. PEPPER. Mr. President, the Senator, I think, can hardly mean that. I want to call his attention to a difference. The Democratic recommendation did not contain the words "or expenditure."

Mr. TAFT. Yes; I think it did.

Mr. PEPPER. No. I ask the Senator from Louisiana. Did it contain the words "or expenditure"?

Mr. TAFT. In our bill; yes.

Mr. PEPPER. No; but the present law does not contain them.

Mr. ELLENDER. The present law does not contain those words.

Mr. PEPPER. It did not contain them?

Mr. ELLENDER. That is correct. But the bill I introduced on behalf of myself and the distinguished Senators from Oklahoma [Mr. Thomas], South Carolina [Mr. Maybank], New Hampshire [Mr. Bridges], and Iowa [Mr. Hickenlooper] contains language identical to the language that ap-

pears in the pending bill. It is verbatim, as a matter of fact. Permit me to further observe that the language is the same as that now incorporated in the Corrupt Practices Act of 1925, with the exception that the words "or expenditures" have been added and also language to cover primary elections, conventions, and caucuses has been added.

Mr. PEPPER. There may be just a few erring Democrats, but we never did pass that law. The Senator might have recommended it, but it was never enacted into law.

Mr. ELLENDER. The bill is now before the Rules and Administration Committee of the Senate and I think it will pass the Senate, if and when it is reported for Senate consideration.

Mr. PEPPER. But it never became a law?

Mr. ELLENDER. No. The Senator is correct.

Mr. PEPPER. Yes; and the difference is very important. It affects the right of the citizen to go forth and advocate the candidacy of whomever he may choose.

Mr. ELLENDER. May I say to the Senator from Florida it is only in the event that union funds are used for political contributions that a union becomes liable. Mr. Green can talk all he wants to, if he pays for his own time or if the members of the union desire to make individual contributions for such a purpose. For another

thing, most unions operate and manage newspapers, and the most of them are maintained by advertisements or by subscriptions from members of the union and from other sources. The proceeds from such newspapers are not union funds. In such cases these newspapers can print anything they desire, and they will not violate the law, so long as union funds are not used to pay for the operation of those newspapers for political purposes.

Mr. PEPPER. The Senator from Ohio apparently did not think so yesterday when the Senator from Washington was interrogating him.

Mr. ELLENDER. I do not recall. May I say to the Senator from Florida, it is only in case union funds are used for political expenditures that unions become liable. That is where the prohibition comes into play.

Mr. PEPPER. Very well. Let us see if the statute says anything about dues. It says the criteria are, first, a labor organization; second, an expenditure. It does not say whether they have to be dues or funds they received from advertising. I should like the Senator to point out the word "dues" to me in the section I have just read—section 315.

Mr. ELLENDER. I did not mention dues. I referred to union funds. If the newspaper is owned by the labor organization and maintained by union funds

(93 Cong. Rec. 6523)

there would be a violation if the proceeds of such a newspaper were used for political purposes.

Mr. PEPPER. There is nothing about dues in this section.

Mr. ELLENDER. The Senator is correct. I never made such a contention. It would be an expenditure by the newspaper itself. This provision makes prohibition against the use of dues paid by members of labor unions in order to aid any particular candidate. In other words, if the dues are paid to the union and become a part of the union's assets, then such dues cannot be used for political contributions.

Mr. PEPPER. The best way to clarify the matter is to read the language:

"It shall be unlawful for any * * * labor organization to make a contribution or expenditure in connection with any election for any political office."

Mr. ELLENDER. Where does the labor organization obtain the money which it spends for such purpose? If it obtains it from its members and such funds become a part of the union's assets, then they cannot be used for political purposes unless the law is violated.

Mr. PEPPER. How does the labor organization obtain the money? The organization may get it from one source or another. It may get it through gifts, subscriptions, or in other ways except by dues. That is

not the point in this measure. The point here is that the money belongs to the union, and the union spends it regardless of where it obtains the money. If one of its members contributed money to the union for the purpose of paying for a radio speech in behalf of a political candidate or of a political party, and the union spent the money for that purpose it would be subject to the criminal penalty provided in this section.

Mr. KILGORE. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. KILGORE. Is it not the experience of the Senator from Florida with reference to union publications such as those put out by the railroad brotherhoods, Labor, and others, that the publications are not paid for by the members through subscriptions, but the publications are sent to the members because a part of their dues pay for the publication? In other words, in most cases the publications are mailed free by the organizations to the members of the union, because of the fact that they are dues-paying members.

Mr. PEPPER. Their dues go into a common fund; yes.

Mr. President, the bill presents an anomolous situation. I think it denies the right of free press. I think if a labor union, as an unincorporated association of citizens, wants to endorse a political candidate, if it wants to put out special issues of its newspaper to appeal to the American

people to vote for the candidate, the union should have the right to do so, and a denial of that right is a denial of a constitutional right of which Congress cannot deprive anyone.

The union is not a corporation. A corporation does not have the right of the citizen to vote. Citizens have the right to vote. If a group of citizens should want to pay dues to their union and say to its president, "Use this money to pay someone to speak for us, to protect labor against this calumny" the provision of the bill would deny that privilege. I claim that is a denial of the right of a citizen to give his money to a common fund to protect his political and economic rights.

Mr. KILGORE. Mr. President, will the Senator yield again?

Mr. PEPPER. I yield.

Mr. KILGORE. I should like to suggest another parallel case to the Senator. The Senator knows that subscribers to newspapers do not always agree with the political expressions contained in their editorial columns. The Senator has spoken of the freedom of the press. I agree with the Senator's statement in that respect. It is contended that a labor union cannot use the dues of its membership for political purposes unless 100 percent of the membership should endorse the use that is proposed to be made of the fund. Would it not be just as fair to say that

a newspaper should not publish an editorial expressing its views on a political subject unless 100 percent of the subscribers to the newspaper endorse the editorial?

Mr. PEPPER. That is certainly a fair parallel. I will go further than that. I do not want to impugn anyone's personal motives in any sense of the word, but I say that since labor, since the working people of this country, became articulate under the administration of Franklin D. Roosevelt, since they learned to work together to meet the danger and menace of slush funds which corporations can find a way to put into the hands of a favorite, there has been a determined effort on the part of certain individuals in Congress, as well as outside, to strike down the power of workers acting cooperatively through their unions. I cannot but regard the provision in the bill to which I am addressing myself as an expression of that sentiment. It has the effect of stifling and suppressing the legitimate political activity of a substantial part of the citizenry of America.

Mr. President, there are 15,000,000 labor union members in America. If there are four members to each family, which is the average American family, these union members are the spokesmen and the bread winners for 60,000,000 Americans. So, to do anything which will impair their right as citizens to write and to speak their views about their Government is a denial not

only of labor's rights, but a denial of the fundamental constitutional right of the citizenry of this land.

The laboring people are poor people. They do not have in their membership rich stockholders, rich directors, rich executives. They pay decent salaries to their leaders, and I think they should. I think a few of the top labor leaders may get more than $25,000 a year. Probably not more than a dozen or say two dozen receive more than that amount. But I am saying that they are representatives of workers and that the membership of the union is composed of workers. They do not have large expense accounts which they can pad and use in political campaigns. They do not own the newspapers of America as, by and large, corporations do, 80 percent of which consistently fought Franklin D. Roosevelt. They cannot work through corporate machinery and exercise its many and multitudinous pressures to achieve their ends. If they do anything they have got to work together through the instrumentality by which alone they can cooperate, their unions, and if that power can be struck down, the political manifestations of the masses of the people of America can be strangled, and when they are taken advantage of, they will be unable to protest effectively in the political forum.

I have said that under this provision of the bill they could not put out a special

edition of the union newspaper. I am not at all sure—and there was some question about it yesterday when the Senator from Washington [Mr. Magnuson] interrogated the Senator from Ohio [Mr. Taft]—I am not at all sure that a labor newspaper can give a political endorsement to a candidate without violating the stringent provision of the bill and at least subjecting themselves to suits or to criminal prosecution. They cannot have radio speeches paid for out of union funds for union purposes. They cannot even exhibit information to their members that might be in the nature of a pamphlet. That was stated yesterday in the debate. To deny them the right to give their honest views about candidates to their members, and use their common funds with which to do so, seems to me a dangerous strangulation of civil rights of the citizenry of America.

It was said yesterday that these prohibitions apply to the Association of Manufacturers; that they will apply, for example, in my State to the Associated Industries, which denounced me in about every other pamphlet it sent out to its membership, paid for by corporate contributions to that association. But believe me, that organization will find ways to avoid the penalties of this provision. The corporate contributions in this country will not be checked or strangled. And they are not trying to clean up the politics of America, either.

A study of some of the past presidential elections will disclose how much the du Ponts contributed to the Republican campaigns, how much the General Motors Corp., President Sloan and others, contributed, and how much Joe Pew and his association contributed. Such a study will reveal how much the Rockefellers and the great rich families of America who own the corporations of America or dominate them, contributed. Oh, they will still have a full war chest to contribute to the Grand Old Party when election time comes, Mr. President. Of course, it will cost them a little less if the workers are strangled so they cannot put up some contributions. The large contributors will gain a little from the enactment of this provision.

Mr. KILGORE. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. KILGORE. May I suggest that the Senator from Florida go one step further and discuss the question of the annual bonuses paid out in election years to directors and high-ranking officials of

(93 Cong. Rec. 6524)

corporations. Every one knows the way they get around the prohibition against corporate contributions, by simply declaring bonuses to certain officials, which can be used for political purposes. That loophole has not been closed, I may suggest to the Senator from Florida.

Mr. PEPPER. Chess is a fairly complicated game, but there will never be on any chess board as many means by which to attain an objective as there are corporate devices by which to achieve the objective the Senator from West Virginia has spoken of.

(93 Cong. Rec. 6530)

Mr. KILGORE. * * * Let us recur to the question whether or not the bill would preclude unions from participating in politics.

Let us consider the railroad brotherhood. I do not think anyone will question that they are a fairly conservative organization. They have legislative committees selected by the membership, and those legislative committees meet prior to an election. They analyze the legislative records of all the candidates on both tickets, and, they will not recommend an individual who has no legislative record. He must have had one before they will endorse him. Based upon such record they have in the past sent to their membership their recommendations with reference to various candidates running for national and State offices. Under the pending bill they could not spend the money for postage stamps to send out such recommendations. They could not spend the money necessary to print such a recommendation, which is an official action of an official group of their own body elected by

them to perform a specific duty. They are precluded from doing that. I can see no way in the world, under the provision in the bill with respect to expenditure, that they could do so. It is not merely a question of radio talks. There is involved their right to hold meetings, to study the relative merits of candidates in elections, to study the relative merits of programs of parties, to decide which platform measures up the best in their belief, and to make known their decision.

Mr. President, I think we are going several steps too far and we are going too far too fast. I think we are removing constitutional rights which belong to the people. A workingman is a constitutional person. A corporation is a legislative legal entity. I believe activities of corporations can be curbed much more easily than activities of a human being can be curbed, be he a laborer, be he a banker, or be he the president of a corporation, or a Member of the United States Senate.

The bill goes even further, Mr. President. It speaks of "associations of employees." It does not speak of "associations of employers." It does not speak of "associations of corporations." There are many loopholes which would permit expenditures by one side, but no opportunity is given for the worker to defend himself. That is what I fear with respect to the bill. I fear what will happen in the future under it. I fear, just as the Senator from Florida

said he feared, the ultimate crash that may result under it, the trend toward communism that may ensue.

EXCERPT FROM THE PRESIDENT'S VETO MESSAGE, RELATIVE TO SECTION 304. HOUSE DOCUMENT NO. 334, 80TH CONGRESS, 1ST SESSION, PP. 9 AND 10.

* * * * * *

9. *The bill raises serious issues of public policy which transcend labor-management difficulties.*

(1) In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill.

Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinction between expenditures made by such corporations for the purpose of influencing the results of an election, and other expenditures made by them in the normal course of their business "in connection

with" an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations.

Debates in the House Subsequent to the Veto of the Bill

(93 Cong. Rec. 7492)

Mr. Robison. * * *

This bill makes it unlawful for the officers of any corporation or business association to expend the funds of such corporation or association for political purposes for the election of a President, Vice President, Senator, or Representative. These funds belong to the stockholders, and the officers have been forbidden by law for years from using the stockholders' funds in an election for these Federal officers. This bill applies that same law to the officers of a labor union. They cannot use the funds of a labor union to aid in the election of Federal officers—President, Vice President, Senator, and Representative. These funds belong to the members of the union. The Congress is of the opinion that it is unfair to the members to use their funds to elect Federal officeholders. It was generally the case of some of the officers of the corporations or business associations belong to different political groups and not interested in the same man or party and, therefore, the law says that the officers can-

not use the funds of these stockholders as it is in many cases to help elect men to office who are opposed by the stockholders or some of them. In almost every instance part of the members of the union favor one particular candidate or party while the other members are opposed to such candidate or party, and the question arises—Is it fair for some two or three officers of that union to use the funds to help elect their particular candidate or candidates and use the money against the candidate or party of the other members?

The President urged that this provision is unfair to both labor and management and that we have no right to pass such a law. The laws as to corporations and associations have been on the books for many years. This will not prevent the publishers of labor papers and editors of such papers from expressing themselves freely whether they are a journal of business or labor. All of the lodges that I know anything about forbid the use of the funds of the lodge to aid any candidate or party. There again the funds belong to the members of the lodge and there is usually a division as to their political affiliations.

I might say that during all of my years of service I have never called on any business concern or labor organization to put any money into my campaign, and so far as I know they have never done so. They have at times spoken complimentary of me

and my record in their journals, and I think they have under this bill the right to do whatever they have done for me heretofore.

This, of course, does not limit in any way any officer or stockholder or any officer or member of a labor union from making such contributions out of his or her funds as is now provided by law to the candidate or party of his or her choice. The limitations of expenditures of the funds of corporations and others should have but one purpose and that is to make our elections as fair and clean as possible. I never heard one of our labor friends complain because the law forbids officers of corporations and business associations from making contributions to candidates or parties. All of us have agreed that has always been a good law as the great corporations could outspend the labor groups or individuals.

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DEBATES IN THE SENATE SUBSEQUENT TO THE VETO OF THE BILL

(93 Cong. Rec. 7372)

Mr. PEPPER. * * *

(Reading)

"Sec. 304 of the Taft-Hartley bill stands out as a direct assault upon free press and a violation of the constitutional guaranty of free speech. Under this section the funds of a labor union could not be used for the purpose of acquainting working men

and women with the voting record of members of Congress upon legislation in which labor may be deeply interested."

I will interpolate here to say that when this matter was being considered in the Senate I said that that should be called the "Republican political insurance section" of the bill, it looks as if they might have desired very strongly to curb the voice of labor in the next election.

(Reading) "Under this section, the funds of a labor union"—

As I read—

(Reading) "could not be used for the purpose of acquainting working men and women with the voting record of Members of Congress upon legislation in which labor may be deeply interested. This provision does not apply to unincorporated employers or trade associations. According to the Department of Commerce, there are some 2,400 trade associations, each comprising a combination of employers, and each made immune from these restrictions on political contributions. Farm organizations, cooperatives, and all unincorporated enterprises are free of the political ban imposed by the bill upon labor unions."

Let me interpolate at this point, Mr. President, that an organization of farmers can spend its money in a political campaign; it can put out literature; it can have radio speeches made. Would Senators who are the advocates of the pending measure

say that the Farmers Union, the National Grange, or the Farm Bureau Federation should not have the right to use their money to tell the American people that a political party or a political candidate is unfair to agriculture in America? Would Senators wish to vote for that kind of bill? Yet, Mr. President, while we do not deny that right to organizations of employers and to farmers' organizations or to other organizations, this bill singles out labor and says, "You cannot give your opinion in your editorial columns about a political party or a political candidate. You cannot make a radio speech and pay for it with union dues, saying a certain party or a certain candidate is unfair to labor. You cannot distribute literature. You cannot disseminate information, even among your membership, of what are the issues as you see them in a political campaign." All this the President points out in his message.

Mr. President, do Senators realize what that does to the fundamental rights of an American citizen? I want to state here and now, I believe that that section of this bill is in violation of the Constitution of the United States, that it will be stricken down in the courts; but it will cost labor a great deal of money trying to protect itself in the courts against the assaults that will be made upon its exercise of free speech and freedom of the press, under the section to which I have adverted in this bill. And so Mr. Green properly points out:

(Reading) "Farm organizations, cooperatives, and all unincorporated enterprises are free of the political ban imposed by the bill upon labor unions."

Now, Mr. President, I will state frankly what is behind this section. There are certain people in the politics of the United States who do not want the working people to be too articulate or too effective. In the past, it was the rich who put up the money in political campaigns. The reports of the United States Congress show, in campaigns of the past, how much the Pews, how much the Rockefellers, how much the Sloans, and how much the du Ponts and other of the rich families of America have poured into political campaigns. But there is something new that has happened in the last few years. The CIO came along with its Political Action Committee. They said that they had a right to take part in politics. They raised from their membership some money, with which they printed literature, they made radio speeches, they disseminated information to the American public, supporting the Democratic Party and men like Franklin D. Roosevelt in the great fight they were making to better the condition of the working people of America.

Now, they are not a corporation, mind you, Mr. President. What a corporation can do can be determined by the law of the State that grants the charter; but the State has no right to tell me, a citizen, what I

can do, except not to violate the law. There is a difference between a corporation, which is a person, and a citizen, who is a citizen. A corporation is not a citizen, yet advocates of the measure talk after this fashion: "We want to put the working employees and management upon the same basis." They propose to reduce the working men and women of America to the inanimate status of a body corporate. They want to strip them of the dignity of a citizen and the right of a citizen under our Constitution, and drag them down to the level of the corporation. Mr. President, a corporation is formed because men and women, the stockholders, do not want to be personally liable for the debts of the joint enterprise. It is a device to limit liability; that is what a corporation is. It is a means of working together, and a device to limit liability. Will it be said that justice is being done when working people are put in that class? Yet there are probably those who say, "We are going to put the corporation that owns the business in the same category with the workers, who are citizens of the country," hence in this bill they

(93 Cong. Rec. 7373)

are picking out a class of our citizens, denying them the rights of citizens to better themselves; just as, in a certain part of the bill, they outlaw what they call the secondary boycott.

That means that if a working man goes to another workingman's home and sits in his parlor in the evening and says, "Listen, you folks over there are working on a commodity which we produce in our plant, and you are helping our employer to become rich, and yet he treats us like dogs. Suppose we strike, quit working for him until he gives us recognition and a decent wage. Why do not you fellows help us by saying you will not work on what he turns out since he treats us as unfairly as he does?" The man who made such a suggestion would violate this law. A man could not even talk to his neighbor about what is best for the community and for the two families without violating the law, according to the provisions of the bill. The President of the United States has pointed that out in his veto message. That is the kind of bill with which we are dealing. That is the reason why I believe we are within our rights when we say that the American people who will be affected by that kind of legislation have the right to know what it is and what it does to them.

(93 Cong. Rec. 7376)

(Excerpt from summary of the bill placed in the record by Senator Pepper.)

* * * * * * *

Section 313 of the bill is admittedly outside of the scope of the Labor Management Relations Act of 1947, and stated to

so be on page 69 of the conference report. This device of injecting such a provision into legislation which purportedly is designed to improve labor-management relationships should certainly be condemned if this legislation is the result of a mandate such as that claimed by its sponsors. The provision relating to political activities clearly does not come within that alleged mandate. It is entirely unrelated to the other provisions of the act and is a matter which in fairness to all concerned should at least be subject to separate debate and consideration.

This section of the bill makes it unlawful for any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors, or a Representative or Senator, or Delegate, or a Resident Commissioner to Congress will be voted for, including any primary election, political convention or caucus.

One of the important functions of a labor union is to educate its members in a variety of ways. To accomplish this purpose it is the practice of such organizations to issue magazines, newspapers, and periodicals which contain items of interest to the members of the organizations. Such articles include news items of importance to working people, instructions and lessons in the trade or craft or work in which such members may be engaged, reports of the activities being carried on by the various

unions and officers and representatives, etc. These magazines and newspapers are not published for political purposes and deal with political subjects only incidentally. During the periods immediately prior to primary elections and general elections the members of the union are obviously interested in the records which have been made by candidates for public office and the effect which the activity of these candidates may have had upon the rights and welfare of the working people. It has been the practice for labor organizations to furnish their members with tabulations of the voting records of representatives to Congress in connection with legislation which has to do with the welfare of employees. It

(93 Cong. Rec. 7377)

has been the practice in these magazines to carry biographical sketches of certain candidates for public office and in addition thereto to publish what might be termed "editorial comment" with respect to the political and economic views of candidates. Unions conceive this activity to be a worthwhile program and a contribution to the improved citizenship of their members. Candidates for office or incumbents should have no objection to having the record which they have made in their high office furnished to the citizens whom they represent.

This bill would prevent labor unions from using their magazines for any polit-

ical activity, from issuing circulars or bulletins or any other type of information which requires any expenditure of money, if such expenditure may be attributed to political activity.

On the other hand the provisions of this bill not only make possible but encourage the indirect method of accumulating huge sums of money for political activity which is not restricted to the furnishing of information to the members of a given organization. It is perfectly proper under this bill for individual members of labor unions to make contributions to a political committee obviously designed to promote the interests of labor in any election.

There is no limit upon the amount which can be contributed to such a political committee and it may use these funds not for the education of the working people but for any other purpose it may desire. We submit that it is this kind of activity which may in the hands of the wrong individuals result in some corrupt practices. It is not the activity of unions in connection with their own members which could become corrupt.

Indeed this legislation merely emphasizes the common criticism of the restriction on expenditures by corporations in political campaigns. It is commonly known that corporations utilize the device of individual contribution by very wealthy persons to political committees and thus successfully and effectively and by the use of tremen-

dous sums of money influence the voting public either for or against a certain candidate.

Both because this bill does not accomplish the end sought to be accomplished in the prevention of any corrupt political activities and because it is so obviously unrelated to the avowed objectives of the Labor Management Relations Act of 1947, it should not receive the support of the Congress.

This effort upon the part of Congress to inject into this bill a provision designed to protect its Members from the consequences of their own votes in connection with it cannot be justified. It does not represent the forthright and honest approach to legislation which American citizens are entitled to expect from their representatives.

(93 Cong. Rec. 7389)

Mr. PEPPER. I am going to ask a question. I say that the President has stated in his veto message that this bill, if enacted, would forbid a union publication from editorially supporting or opposing a political party or a candidate in a political contest. Does the Senator from Idaho think that is in accord with the free press provision of our Federal Constitution?

Mr. TAYLOR. No; certainly I do not, Mr. President. I deplore those provisions in this bill.

Frankly, I am inclined to agree with the President that this thing may backfire, and all the radio commentators may find that they will be off the air, regardless of whether they work for a labor union or for some corporation. Indeed, I can see no good reason why a newspaper should be permitted to publish comments

(93 Cong. Rec. 7390)

about an election, if this bill becomes law, because the bill provides that no corporation can take part in an election, and certainly the average newspaper is owned by a corporation. The bill does not say anything about exempting a newspaper corporation.

Mr. President, inasmuch as the labor unions are, by this bill, forbidden to take any part in elections or political matters, either directly, indirectly, or in any other way, presumably the voters should vote for or against a Senator or a Member of the House of Representatives because of the way he combs his hair, the way he smiles, or perhaps even the efficacy of his technique in kissing babies, but certainly they would seem to be prohibited from voting in the truly American way on the basis of whether they favor or disapprove of the things for which the Members of Congress voted.

(93 Cong. Rec. 7452)

Mr. MORSE. * * *

So, Mr. President, I think I had better read the letter, rather than run any risk:

(Reading) "Dear Senator Barkley: In connection with the discussion of the Taft-Hartley labor bill (H. R. 3020), may I point out the following very serious aspect of one of its provisions which so far as we know has received no attention."

Mr. President, I digress from the letter long enough to say that I do not think that should surprise Mrs. Strauss. I imagine that there is quite a great deal in the bill that has not yet received any consideration. As the years pass by, if this bill becomes law, I think the lawyers will find newer and newer aspects of the bill which will receive, because of their diligent research, the serious consideration of a number of courts.

But, Mr. President, going back to the letter, Mrs. Strauss says further:

[Reading] "Section 304 of the bill forbids any corporation or any labor union to make a contribution or expenditure in connection with Presidential or congressional primaries or elections. The league has taken no position on the labor bill, either pro or con. However, we are informed by lawyers and experts who have worked on the legislation that this provision would apply to incorporated organizations such as

the League of Women Voters. I am sure you are familiar with the non-partisan election material, designed to stimulate a larger and more informed vote, which the league has been issuing for the past 27 years. This type of activity, which we consider of vital importance to the maintenance of a participating electorate, would, we understand, be prohibited by this section of the bill. This would affect not only the League of Women Voters but all other incorporated civic groups who have been accustomed to providing roll calls and other election tools for the benefit of the voter who seeks to cast an intelligent ballot."

[Reading] "We hope you may be able to point out to the Senate the extremely serious consequences which can emerge from such a stifling of our rights as active citizens."

(93 Cong. Rec. 7526)

Mr. O'MAHONEY. * * *

O Mr. President, let me take sufficient time to analyze another provision of the bill which has been completely misunderstood and misrepresented by the spokesmen for the bill. I was upon the floor of the Senate when the distinguished senior Senator from Ohio [Mr. Taft] told this body that the conferees had written into this bill a provision which would prevent labor organizations from spending the money of their unions to affect in any way a presidential election. I read the provision, and

when I read it I was amazed to find that there was not a word in it to support the interpretation given by the Senator from Ohio that this bill would prevent labor unions from publishing newspapers with their funds raised by dues but permit them to express political opinions in papers financed by subscriptions.

The PRESIDENT PRO TEMPORE. The Senator's time has again expired.

Mr. PEPPER. Mr. President, I yield to the Senator from Wyoming three more minutes.

The PRESIDENT PRO TEMPORE. The Senator from Wyoming is recognized for an additional 3 minutes.

Mr. O'MAHONEY. He said, in response to the Senator from Florida [Mr. Pepper], that the purpose of the bill was to permit labor unions to print newspapers if they did it by subscriptions. Let us see what is done. I will read from section 304 in regard to restriction on political contributions and expenditures. This is an amendment of section 313 of the Corrupt Practices Act:

"It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure"—

That is the new word used—

"in connection with any election to any political office"—

Observe that the language is "in connection with," not "to affect" any election—

"or in connection with any primary election or political convention or caucus held to select candidates for any political office, or"—

Observe this language—

"or for any corporation whatever, or any labor organization to make a contribution or expenditure"—

That is the new word "expenditure"—

"in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for."

Observe these words, "any corporation whatever or any labor organization to make a contribution or expenditure in connection with" such an election.

Mr. President, if a labor organization is prohibited from making an expenditure in connection with a Presidential election or any other election, then by this language "any corporation whatever" is also prohibited from doing so. Corporations and labor organizations are treated precisely the same. The section is not a prohibition against expenditures to "affect or influence" an election but "in connection with" an election.

I said to the Chicago Tribune representative a week ago Saturday when he called me up, and I say to the Associated Press, the United Press, and the editor of every newspaper in the United States that is published by a corporation, that if this measure provides what the Senator from Ohio says it does, then not only are labor organizations prohibited from making expenditures "in connection" with an election but so also are any corporation newspapers. An expenditure which is made to send a correspondent to Philadelphia to report the next Republican Convention is an expenditure "in connection with" the next election and is prohibited.

Editors who want to override the veto may comfort themselves that the bill will not be enforced. But I say to them and to you that this is an example of the careless manner in which this bill has been drawn. It is only one of many mistakes. The bill should be rewritten.

This is a time for patience, industry, and tolerance. Let us sustain the veto and write a good bill.

TEXT OF SECTION 304, LABOR-MANAGEMENT RELATIONS ACT, 1947, AS ENACTED

RESTRICTIONS ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50,

App., sec. 1509), as amended, is amended to read as follows:

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year,

or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Public Law 101, § 304, 80th Congress, 1st Session, c. 120.)

U. S. GOVERNMENT PRINTING OFFICE, 1948

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 695

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, OFFICER THEREOF

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

APPELLEES' STATEMENT AS TO JURISDICTION

CHARLES J. MARGIOTTI,
LEE PRESSMAN,
FRANK DONNER,
Counsel for Appellees.

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

No. 167-48

UNITED STATES OF AMERICA,

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, OFFICER THEREOF

APPELLEES' STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States as amended, the United States has submitted its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction to review the judgment of the district court entered in this cause on March 17, 1948, dismissing the indictment filed against the defendants.

Jurisdiction

The Appellees do not contend that the Supreme Court lacks jurisdiction on appeal to review the judgment of the district court entered therein.

Statute Involved

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120), provides:

> Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Nature of the Issue and the Ruling of the District Court

The defendants herein were indicted for violation of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947.

The indictment recites *inter alia* that the defendant Congress of Industrial Organizations caused to be published in the "CIO NEWS", a publication owned and published by said defendant, an article in support of a political candidate for election to a federal office.

The article announced that a special Congressional election was to be held in the City of Baltimore; that one of the candidates had been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland and that the opposition candidate was known for his anti-union views and activities.

The article further set forth that the Congress of Industrial Organizations was requested by representatives of its members within the Congressional District involved to urge members of CIO unions to cast their votes for the favored candidate, Judge Garmatz.

The article expressed the view that the Labor-Management Relations Act, 1947, is a bad law and that its evils had become well known to members of defendant Congress of Industrial Organizations throughout the length and breadth of the country.

The article expressed the view of members of defendant Congress of Industrial Organizations in the City of Baltimore that Judge Garmatz would act for the repeal of the law, an objective deemed essential by defendant Congress of Industrial Organizations in the public interest.

The article, on behalf of the members of defendant Congress of Industrial Organizations in Baltimore, urged that all members residing and voting in the Congressional

District in question cast their votes for Judge Garmatz and expend every effort to the end that others might do likewise.

The indictment recites that defendant Congress of Industrial Organizations made certain expenditures in publishing and circulating the issue of the "CIO NEWS" containing the aforesaid article.

The indictment further recites that defendant Congress of Industrial Organizations caused one thousand extra copies of the "CIO NEWS" containing the aforesaid article to be circulated in the Congressional District in question.

Defendant Philip Murray was indicted for the sole reason that he consented to the activity of the defendant Congress of Industrial Organizations set forth above.

On February 20, 1948, defendants filed with the district court a motion to dismiss the indictment on the ground that the provisions of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, are unconstitutional and violate the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States.

The district court held that the indictment charged an offense under Section 304 of the Labor-Management Relations Act, 1947, but that the statute, in so far as it prohibits the expenditure of funds of a labor organization in connection with a federal election is, on its face, an unconstitutional abridgment of defendants' rights of freedom of speech, freedom of press and freedom of assembly.

With respect to other contentions of the defendants, the court stated:

> "Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amend-

ments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment."

The Nature of the Question

The issue presented by the appeal is one of transcendent importance. That issue is whether the Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office. A further question posed by this case is whether the president of such a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

Every case in which the Supreme Court is called upon to vindicate civil rights and to overthrow a statute invading the liberty of the individual presents issues of more than routine importance. In this case, however, a peculiar significance attaches to the prohibition for three basic reasons:

1. The right which Congress has invaded is the right to a free press. Few rights in our society are more important.

Far less serious invasions of the freedom of the press than that presented by the statute have been repeatedly condemned by the Supreme Court as inconsistent with the basic rights guaranteed by the Constitution.

2. The restraints involved present a compelling case for judicial intervention because they seek to bar access to the political process. The statute prevents the exercise of civil rights precisely in that area where such exercise is most vital.

3. The injuries thus imposed would be profound if imposed at any time and upon anybody. They are particularly serious when imposed upon defendants, for defendants are

an unincorporated association and an officer thereof who seeks to speak in the political arena for millions of its members who have joined together for the precise purpose of achieving through group action what as individuals they are powerless to do. Moreover, the restraints are imposed on the eve of an election which presents issues—of peace and war, prosperity and depression, security and want—of tremendous importance to working people of America whom defendants represent.

We submit that the district court properly struck down the statute as an unconstitutional invasion of defendants' freedoms. We urge that this Court act promptly to affirm the decision of the district court so as to afford defendants an adequate opportunity to exercise their political rights in a meaningful and effective way, namely, in connection with the momentous election which is now pending.

Respectfully submitted,

CHARLES J. MARGIOTTI,
LEE PRESSMAN,
FRANK DONNER,
Attorneys for Defendants.

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No. 695

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CLERK

IN THE

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OCTOBER TERM 1947

UNITED STATES OF AMERICA, *Appellant*

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

CHARLES J. MARGIOTTI
LEE PRESSMAN
FRANK DONNER
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IN THE

Supreme Court of the United States

OCTOBER TERM 1947

No. 695

UNITED STATES OF AMERICA, *Appellant*

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

OPINION BELOW

The opinion of the district court (R. 13) has not yet been reported.

JURISDICTION

This Court has jurisdiction under the Criminal Appeals Act, as amended by the Act of May 9, 1942, 56 Stat. 71, 18 U.S.C. Supp. V, 682.

QUESTIONS PRESENTED

1. Whether, as the court below held, that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election is an unconstitutional abridgment of the rights of freedom of speech, press and assembly, protected by the First Amendment.

2. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election arbitrarily discriminates against labor organizations, their officers and their members in violation of the Fifth Amendment.

3. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election fails to provide an ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

4. Whether that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election abridges rights reserved to the people by the Ninth and Tenth Amendments.

STATUTE INVOLVED

"Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U.S.C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution published by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization'

means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Public Law 101—80th Congress, 1st Session.)

STATEMENT

On February 11, 1948, an indictment was returned against appellees charging violation of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947.

The first count of the indictment (R. 2–6) alleges that appellee, Congress of Industrial Organizations, a labor organization, made expenditures from its funds for the publication of a weekly periodical, "CIO NEWS", including the issue of July 14, 1947, in which, in anticipation of the holding of a special election to select a representative in Congress, there appeared an article, "Test of Political Freedom".

The article, the full text of which is attached to this brief as Appendix I, was written by appellee Philip Murray, President of the Congress of Industrial Organizations. It announced that a special Congressional election was to be held in the City of Baltimore; that one of the candidates had been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland and that the opposition candidate was known for his anti-union views and activities.

The article further set forth that the Congress of Industrial Organizations had been requested by representatives of its members in the Congressional District involved to urge members of CIO unions to cast their votes for the favored candidate, Judge Garmatz.

The article expressed the view that the Labor-Management Relations Act, 1947, is a bad law, that its sponsors had intended to stifle the voice of labor in political matters and that Judge Garmatz would act for the repeal of the law, an objective deemed by appellee Congress of Industrial Organizations to be in the public interest.

On behalf of the members of appellee Congress of Industrial Organizations in Baltimore, the article urged that all mem-

bers residing and voting in the Congressional District in question cast their votes for Judge Garmatz and expend every effort to the end that others might do likewise.

The indictment recites that appellee Congress of Industrial Organizations made certain expenditures in publishing and circulating the issue of the "CIO NEWS" containing the aforesaid article and that the Congress of Industrial Organizations caused one thousand extra copies of the "CIO NEWS" containing the aforesaid article to be circulated in the Congressional District in question.

Appellee Philip Murray is charged in the second count of the indictment (R. 6) with a violation of the statute for the sole reason that, as President of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count.

On February 20, 1948, appellees filed with the court below a motion to dismiss the indictment (R. 7) on the ground that that portion of the statute here involved violates rights protected by the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States.

The court below, in an opinion filed on March 15, 1948, sustained the motion to dismiss the indictment (R. 13–19). The court held that the indictment charged an offense under Section 304 of the Labor-Management Relations Act, 1947, but that that portion of the statute prohibiting the expenditure by a labor organization of funds in connection with a federal election is, on its face, unconstitutional. The court ruled (R. 16),

> "I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life."

The court found it unnecessary to pass upon appellees' additional contentions with respect to the unconstitutionality of the statute and stated (R. 19),

"Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment."

Thereafter the Government filed a direct appeal to this Court under the Criminal Appeals Act and on March 29, 1948, this Court noted probable jurisdiction (R. 23).

SUMMARY OF ARGUMENT

I.

This case presents the issue of whether Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office and whether the president of a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

An unusual significance attaches to this case because the statute which it places in issue—a portion of Section 304 of the Labor-Management Relations Act, 1947—invades the right of a free press, because it bars free access to the political process so vital to the preservation of a democratic society and because its restraints are imposed upon a labor organization and its president who seek to speak in the political arena for millions of working people and to participate in a pending election which presents issues vital to their interests.

Section 304 was incorporated in the Labor-Management Relations Act, 1947, although it is wholly unrelated to issues of labor-management relations and although Congressional Committees which had considered the problem had warned against the constitutional dangers implicit in a ban of the type contained in this section. The restraint contained in the statute is bolder and more deliberate than that involved in cases in which this Court has in the past acted to affirm freedom of

the press. *Near* v. *Minnesota*, 283 U. S. 697; *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233.

The statute does not directly proscribe the exercise of a right; it prohibits the expenditures which finance that exercise. But this circumstance presents an additional basis for invalidating the statute on its face, since there is inevitably imbedded in the statute an all-inclusive ban upon all types of activity involving civil rights inasmuch as such activity cannot be engaged in by appellees without expenditures. *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 69 N. E. (2d) 115.

To deny rights of political expression to any group is to cut it off from an opportunity to participate in the processes which have their outcome in legislative and other decisions affecting its interests. *United States* v. *Carolene Products Co.*, 304 U. S. 144. Congress therefore cannot be the sole judge of the propriety of curtailing rights of political expression. If this were permitted interferences with the political mechanism might well perpetuate themselves. The Government has ignored this fundamental aspect of the case and justifies Section 304 primarily on the ground that the end sought is a permissible one.

This application of the usual presumption of validity to a statute which on its face limits political rights is plainly erroneous. For when it is sought to curtail basic rights of expression the statute must be drawn narrowly to deal with the precise evil which the legislature is seeking to curb. A substantial showing of a necessity for the limitation must be made and the conduct regulated must be specifically defined to insure security for free expression. *Schneider* v. *New Jersey*, 308 U. S. 147; *Thornhill* v. *Alabama*, 310 U. S. 88; *Bridges* v. *California*, 314 U. S. 252. Nor does *United Public Workers* v. *Mitchell*, 330 U. S. 75, hold to the contrary. That case dealt with Congressional power with respect to government employees not with the regulation of elections. The conduct involved therein was partisan political activity not the expression of political views and, in contrast to the absolute prohibition of Section 304, there was there involved a mere regulation.

The claimed justification of the statute to insure the purity of elections is the strongest argument against it. The suppression of political freedom endangers rather than preserves the purity of the electoral process. This was recognized from the very beginning of our legislative experience and has been repeatedly emphasized by the Court. *Stromberg* v. *California*, 283 U. S. 359; *Whitney* v. *California*, 274 U. S. 357. Nor may the statute be justified on the theory that it removes the influence of aggregate wealth. Here expenditures are not limited; they are totally banned. And only the expenditures of labor organizations are prohibited not those of other unincorporated associations, even when composed solely of trade union members.

But labor organizations have from the very beginning of their functioning participated in legislative and political activities and programs. Today, with the enlarged role of government in economic life, such political activity is essential in order to preserve the gains achieved through self-organization and collective bargaining. To deny workers the right of collective political action would be to promote strikes. The Government itself has recognized, in construing the Federal Regulation of Lobbying Act, that political activity is not foreign to the fundamental purposes of labor organizations.

Certainly it cannot be questioned that labor organizations enjoy constitutional protection in legislative and political activities unrelated to federal elections. But such activities cannot be separated for constitutional purposes from the prohibited election activities. All of the legislative and political activities of labor organizations are part of an inseparable whole and necessarily include support for political candidates. If the legislative and political activities outside of the scope of the statute enjoy constitutional protection then the activities in connection with the election are likewise privileged. *Bridges* v. *California*, 314 U. S. 252; *West Virginia State Board* v. *Barnette*, 319 U. S. 624.

Political activity on the part of labor organizations is not only in accord with the historic practices of such organizations but is expressly provided for in their constitutions. The Government's case thus reduces itself to a claim that the ma-

jority rule principle must be abrogated where political activity is involved. But all of the reasons which justify the majority rule principle in connection with economic activity apply equally to political activity. *DeMille* v. *American Federation of Radio Artists*, 31 Cal. (2d) 137, certiorari denied, April 19, 1948, No. 679, this Term. Non-consenting individuals and minorities are not, under American labor jurisprudence, deemed to be coerced by majority decisions in the economic sphere. Nor is the majority rule principle regarded as inapplicable in connection with legislative and political activity which falls short of participating in election campaigns. How can it be said that coercion exists merely because the activity involved is in connection with an election? Moreover, the Government's justification of the statute on the theory that it coerces a non-consenting minority must be rejected because, in contrast to the British precedents, the application of the statute does not turn upon assent. The Government is required to confine itself to the claimed abuse in order to avoid a conflict with civil rights.

The phrase "expenditure in connection with any election . . . or in connection with any primary election or political convention or caucus" is so vague as to conflict with the First and Fifth Amendments. A vague criminal statute involving civil rights is far more injurious than an ordinary criminal statute since it imposes a previous general restraint upon activities outside of its actual purview and creates an opportunity for discrimination against unpopular minorities. *Stromberg* v. *California*, 283 U. S. 359; *Thornhill* v. *Alabama*, 310 U. S. 88. The phrase "in connection with any federal election" has no commonly accepted meaning and neither the dictionary nor the statute nor the legislative history afford an ascertainable standard for determining the meaning of these words. As the phrase is written it is all-embracing. The term "expenditure" would interdict every form of conduct engaged in by labor organizations which could be labeled "in connection with" a federal election. The phrase as a whole is one of boundless scope, the meaning of which would baffle intelligent men.

The very efforts of the Government to supply meaning to

the statute reveal its constitutional weakness. The Government urges that the phrase "in connection with any election" means "for the purpose of influencing the result of an election". But this *ad hoc* gloss is not justified either by context or legislative history and, since it seeks to give meaning to a portion of the statute by reference to the defining sections of the Federal Corrupt Practices Act, it is inconsistent with the Government's failure to go to those sections in explaining the meaning of the term "expenditure". In addition, the Government's explanation of the phrase, even if otherwise acceptable, leaves the statute fatally vague because the term "expenditure" is undefined.

In an effort to impart to the term "expenditure" some defined limitations, the Government refers to the legislative debates and the attempts of the sponsors of the law to suggest limitations upon the seemingly limitless reach of the literal words of the statute. The sponsors were undoubtedly confronted with the dilemma of seeking to avoid unconstitutional all-inclusiveness on the one hand and an unconstitutionally vague limitation in scope on the other. This dilemma has not been resolved. For the legislative history merely emphasizes the vagueness of the statute and makes its applicability turn upon such factors as the source of the expenditures involved, whether from subscriptions or dues; the nature of the expenditures, whether exceptional or routine, and the purpose of the expenditures, whether to launch a diatribe or not.

The Government's failure to resort to the defining sections of the Federal Corrupt Practices Act to throw light upon the term "expenditure" is no accident. The definition of "expenditure" contained in that Act would merely extend to Section 304 the confusion which already exists in connection with the 1925 Act. The vagueness of the definition of "expenditure" in the 1925 Act has been commented upon by a Congressional Committee.

II.

The denial of political rights to a labor organization, such as appellee Congress of Industr Organizations, is a denial of political rights to the millions of its members who have formed

and joined appellee in order to achieve political goals which as individuals would be beyond their accomplishment.

The considerations which inspire men and women to join labor organizations for economic purposes may not be realistically distinguished from those which prompt them to common political action and the inequality of bargaining power which besets the employee in the economic sphere is dwarfed by corresponding evils in the political sphere. Thus, representative election figures for the national election campaigns of 1940 and 1944 show that powerful individuals and their families, prominently identified with employer interests, contributed huge amounts to political campaigns. Unless the members of labor organizations are given the right collectively to direct their political strength against the strength of these powerful individuals and family groups, the democratic framework of our entire society will be endangered.

III.

The statute is invalid because it is aimed solely at labor organizations and no other type of unincorporated association. Viewed in a context of political reality, this is arbitrary discrimination, wholly unjustified by our national experience prior to the passage of the Act. The available literature demonstrates that unincorporated associations with an anti-labor viewpoint have played a formidable role in our political and legislative processes.

The discrimination which is embodied in the law attains constitutional status particularly because it is a discrimination in the field of civil rights. It is an attempt to substitute a monopoly for a free trade in ideas. The seriousness of the discrimination is, moreover, emphasized by the fact that the same upper-income groups which exert such a one-sided influence on elections by virtue of their contributions and expenditures dominate the opinion-influencing mechanisms in this country generally. Section 304 has thus intensified pre-existing inequalities in our political life. The discriminatory handicap imposed by the statute can be well appreciated when it is realized that the costs of reaching the electorate today are enormous. Unless labor organizations are freed of the statutory restraints there is a serious danger that our entire elec-

toral process will fall prey to small undemocratic wealthy groups.

IV.

Political activity is one of the fundamental rights guaranteed to the people by the Constitution. This right defines the character of our government and our civil rights are merely guaranteed so that this right shall not be destroyed by arbitrary official action. The federal government is devoid of the power to cut off the right of political expression. The asserted basis for Section 304 is Article I of the Constitution but that Article merely empowers Congress to preserve the purity of the electoral process. In no case under Article I has the power of the government been sustained to suppress civil rights or rights of political expression. The exercise of this power may not be employed to destroy the inviolate right of the people to engage in political activity or to deny to a free people the means of insuring that elections will be representative.

ARGUMENT

I.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES APPELLEES'[1] FREEDOM OF SPEECH AND FREEDOM OF THE PRESS IN VIOLATION OF THE FIRST AMENDMENT

This case presents to the Court an issue of transcendent importance. That issue is whether the Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office and whether the president of such a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

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[1] Appellees, as the court below held (R. 16), are protected by the Bill of Rights. See, for example, *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, and *Bridges* v. *California*, 314 U. S. 252.

Every case in which the Court is called upon to vindicate civil rights and to overthrow a statute invading civil rights presents issues of more than routine importance. In this case, however, a peculiar significance attaches to the prohibition for three basic reasons:

1. The right which Congress has invaded is the right to a free press. Few rights in our society are more important.

> "The only security for all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, *Writings of Thomas Jefferson* (Wash. ed.), vol. 37, p. 325.

The lessons involved in obtaining freedom from an oppressive government impressed the framers of the Constitution with the key importance of a free press. The Continental Congress in its letter sent to the Inhabitants of Quebec (October 26, 1744) said:

> "The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs." *Journal of the Continental Congress* (1904 Ed.), vol. I, pp. 104, 108.
>
> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, at p. 250.

Nor does the high constitutional status which a free press enjoys disappear because the newspaper involved is a small one with a limited circulation among working people, for the restraints upon freedom of the press which it was the intention of the Constitution to remove were especially directed at curtailing the circulation of newspapers, "particularly among the cheaper ones, whose readers were found among the masses of the people". May, *Constitutional History of England* (7th ed.), vol. 2, p. 245. Liberty of the press "is essential

to the poorly financed causes of little people". *Martin* v. *City of Struthers, Ohio*, 319 U. S. 141, 145.

As we will indicate below, far less serious invasions of the freedom of the press than that presented by the statute involved herein have been repeatedly condemned by this Court as inconsistent with the basic rights guaranteed by the Constitution.

2. The restraints created by the statute present a compelling case for judicial intervention because they seek to bar access to the political process. The statute prevents the exercise of civil rights precisely in that area where such exercise is most vital to the preservation of a democratic society.

3. The injuries thus imposed would be profound if imposed at any time and upon anybody. They are particularly serious when imposed upon appellees, for appellees are an unincorporated association and an officer thereof who seek to speak in the political arena for millions of members of labor organizations who have joined together for the precise purpose of achieving through group action what as individuals they are powerless to do. Moreover, the restraints are imposed on the eve of an election which presents issues—of peace and war, prosperity and depression, security and want—of tremendous importance to working people of America whom appellees represent.

A. **The statute and its background**

The statute now before the Court was passed as Section 304 of the Labor-Management Relations Act, 1947. Although it is a part of a law dealing with labor-management relations it is in no way addressed to the problems of labor-management relations. Indeed, a search of the hearings before the House and Senate Committees which heard testimony with respect to the bills which subsequently became the Labor-Management Relations Act, 1947, reveals that no testimony whatsoever was presented to either the House Education and Labor Committee or the Senate Committee on Labor and Public Welfare on the subject contained in Section 304.

Section 304 amends Section 313 of the Federal Corrupt Practices Act. In 1943 the Federal Corrupt Practices Act was

amended by Public Law 89—78th Congress, the Smith-Connally Act (June 25, 1943, c. 144, 57 Stat. 163). Section 9 of the Smith-Connally Act, which expired on June 30, 1947, barred labor organizations from making contributions in connection with federal elections.[5]

Between the passage of the Smith-Connally Act and the enactment of Section 304 a number of Congressional Committees investigated the subject of the political activities of labor organizations. See *Report of Special Committee to Investigate Presidential, Vice-Presidential and Senatorial Campaign Expenditures, 1944* (S. Rep. No. 101, 79th Cong., 1st Sess.); *Report of the Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944* (H. Rep. 2093, 78th Cong. 2d Sess.); *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.); and *Report of the Special Committee on Campaign Expenditures, 1946, to the House of Representatives* (H. Rep. No. 2739, 79th Cong., 2nd Sess.).

Only the 1944 Senate Investigating Committee report considered the problem of the constitutionality of legislation such as is contained in Section 304.[6] The 1944 Senate Committee recommended the complete revision of laws governing campaign contributions and expenditures. Such revised legislation, the Committee urged, "should not limit the right of responsible political organizations to present their views to the electorate or infringe upon freedom of speech or of the press and it should not impede free expression of opinion on political matters". S. Rep. No. 101, 79th Cong., 1st Sess., p. 80.

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[5] The Smith-Connally Act was passed over the veto of President Roosevelt. In commenting upon Section 9, President Roosevelt stated (Sen. Doc. No. 75, 78th Cong. 1st Sess.):

"This provision obviously has no relevancy to a bill prohibiting strikes during the war. . . . If there be merit in the prohibition, . . . careful consideration should be given to the appropriateness of extending the prohibition to other non-profit organizations."

[6] The 1946 Senate Committee recommended that legislation be enacted to cover the field of "expenditures." However, the Report makes it clear (at p. 31) that, "No attempt should be made to restrict the right of any group of individuals to associate freely and to speak and publish to the body politic their individual and collective views on political issues or candidates. Our Federal Bill of Rights guarantees this opportunity."

A minority of the Committee suggested a prohibition upon expenditures as well as contributions to be applied in connection with federal elections to a corporation, bank or labor organization. A majority of the Committee opposed this minority recommendation on the following grounds (Report, pp. 83–84):

"The committee as a result of its investigation unanimously came to the conclusion that prohibitions and sanctions had failed to prevent pernicious political activity in Federal elections. They concluded that free and prompt publicity as to campaign contributions and expenses would be more likely to achieve the desired result. Therefore, its recommendations as set forth above stress the reduction of prohibitions and the increase of publicity. So this last proposal is inconsistent with the general theory of the recommendations.

"Moreover, the extension of the prohibition to include expenditures would tend to limit the rights of freedom of speech, freedom of the press, and freedom of assembly as guaranteed by the Federal Constitution. The investigations which the committee has made have brought out the fact that many organizations claiming to be educational are claimed by others to be purely political. The line of demarcation is difficult, if not impossible to draw, since it depends to a considerable extent upon human motives. An expenditure made in connection with an election may well be for the publication of pamphlets, or newspaper articles or speeches justifying the point of view of the organization paying for it. An editorial in a newspaper states its position. The reproduction of that editorial in the form of a pamphlet or a speech based on that pamphlet may state the position of the organization paying for it. Free discussion of political questions should be encouraged, not prohibited.

"Furthermore, the prohibition of an expenditure as distinguished from a contribution comes in an entirely different category from the prohibition of contributions in the meaning of the Corrupt Practices Act.

"While the above objections apply to a corporation, and a bank, and a labor organization, all three mentioned in the above recommendation, they are stronger when applied to a labor organization, because the latter is not a legal person like a corporation, but an aggregation of individuals like a church, or a fraternal organization, or a social group.

"It should be noted that the objection to the recommendation is confined to the *prohibition* of expenditures, not to the *publication* of them. Full and complete publicity of the latter should be exacted." S. Rep. No. 101, 79th Cong., 1st Sess., pp. 83–84.

Section 304 achieved three results:

1. It made the restraints of the Smith-Connally Act permanent.

2. It broadened the area of the prohibition to include not only contributions but also expenditures.

3. This broadened prohibition is applied not merely to final elections as formerly but also to primaries, conventions and caucuses.

Section 304 was passed over the veto of President Truman. In dealing with the constitutional aspects of Section 304, the President stated (House Doc. 334, 80th Cong., 1st Sess., pp. 9–10):

"In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill."

It is important to delineate the precise impact of the law. While Section 304 applies to labor organizations, its restraints do not apply to any other type of unincorporated association. Moreover, Section 304 applies to all corporations without distinction. It embraces not merely ordinary business corporations whose activities in connection with federal elections are not a part of their normal activities but charitable and nonprofit corporations as well as corporate organs of public information and opinion, such as newspapers and radio stations. As President Truman pointed out in his veto message (*supra*):

"Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering

with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinction between expenditures made by such corporations for the purpose of influencing the results of an election and other expenditures made by them in the normal course of their business 'in connection with' an election. Thus, it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations."

B. Section 304 on its face violates freedom of speech and freedom of the press.

1. The purpose of Section 304 and the nature of the rights infringed by it.

It is important to bring into focus the precise nature of the activities for which appellees have been indicted.

Appellee Congress of Industrial Organizations has been indicted for the sole reason that it printed an article in support of a political candidate for election to a federal office in a weekly newspaper, the "CIO NEWS", owned and published by said appellee, and that it caused the issue of said newspaper containing said article to be circulated.

Appellee Philip Murray has been indicted for the sole reason that he consented to the activities of the Congress of Industrial Organizations, set forth in the preceding paragraph.

This is not a case in which a civil liberty has incidentally fallen victim to a broad regulatory statute directed at other ends. In this case the precise purpose of the enactment was to interfere with appellees' civil rights. It was the specific design and aim of Section 304 of the Labor-Management Relations Act, 1947, to silence the press of labor organizations.

Moreover, we are not dealing with a case in which a regulation directed at the press is subject to judicial scrutiny merely because its effect is to impose a restraint, either prior or subsequent, on its freedom. The problem here is not whether a tax, a licensing ordinance, an ordinance dealing with a breach of the peace, is in conflict with constitutional guarantees. It was the intent of the framers of Section 304

purely and simply to prohibit the functioning of the labor press in connection with federal elections. It is accurate to state that there has never been a case before this Court involving the freedom of the press in which the motive to restrain has been so clear and unadorned.

But this Court has repeatedly demonstrated a jealous guardianship of the freedom of the press which Section 304 seeks to destroy. In *Grosjean* v. *American Press Co., Inc., supra*, the Court held unconstitutional a state statute imposing a licensing tax on the privilege of engaging in the business of selling advertising upon the publishers of all newspapers or magazines having a weekly circulation of more than 20,000 copies.

In condemning the tax the Court stated (at p. 250):

> "It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees."

If a tax directed at the press cannot withstand the Constitution, what shall be said not of a tax but of a complete and outright prohibition such as is presented by Section 304?

In *Near* v. *State of Minnesota*, 283 U. S. 697, the Court struck down a statute providing for the suppression of defamatory newspapers by injunction unless the publisher could prove truth and good motive of the defamatory charges. The Court pointed out that the statute, upon the issuance of an injunction, imposed an unconstitutional previous restraint upon publication. In the present case, if appellees desire to publish even a harmless article concerning a candidate in a federal election they are subject not to censorship but to absolute prohibition.

But the fact that an article is an endorsement or censure of a public official can never supply a basis for a denial of constitutional protection. This was made clear in the *Near* case itself when the Court observed that the press must be particularly free to convey information with respect to public officials. The Court stated (at pp. 716–717):

> "The conception of the liberty of the press in this country had broadened with the exigencies of the colonial period and with the efforts to secure freedom from oppressive administration. That liberty was especially cherished for the immunity it afforded from previous restraint of the publication of censure of public officers and charges of official misconduct."

The very complexity of government and the danger to its well-being by unfaithful officials "emphasizes," the Court said (at pp. 719, 720), "the primary need of a vigilant and courageous press, especially in great cities." And in the *Grosjean* case the Court pointed out (at p. 250) that "since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

Nor is a cure for the impairment of appellees' constitutional rights effected by the circumstance that one thousand extra copies of the publication were circulated in the area where the election took place. Liberty of circulation is a vital aspect of liberty of the press.

Thus, in *Lovell* v. *City of Griffin*, 303 U. S. 444, the Court held unconstitutional an ordinance prohibiting the distribution of literature of any kind without permission from the City Manager. The Court there pointed out that freedom of speech and freedom of the press "are among the fundamental personal rights and liberties" protected by the Constitution. The Court emphasized, moreover, that:

> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed without the circulation the publication would be of little value.' *Ex Parte Jackson*, 92 U. S. 727."

See, also, *Winters* v. *State of New York*, decided March 29, 1948, No. 3, this Term.

In considering the nature of the right which has been invaded, it is important to emphasize that it is not only the right to speak, print and publish which is invaded by the statute. The right of the members of appellee to be informed has been cut off as well. The article which furnished the basis of the

indictment against appellees was composed, published and circulated because Congress of Industrial Organizations members in Baltimore thought it was vital that workers in Baltimore be informed of the issues involved in the election in which Judge Garmatz was a candidate.

As this Court has pointed out in *Martin* v. *City of Struthers, Ohio*, 319 U. S. 141, 146–147:

> "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved."

See, also, *Marsh* v. *Alabama*, 326 U. S. 501.

We believe that further citation of authorities is superfluous to establish the fact that what is involved here is a deliberate infringement of that most vital of all liberties, namely, freedom of press and freedom of speech, and that these liberties enjoy constitutional protection.

2. The fact that the prohibition is upon expenditures rather than directly upon the exercise of the right does not save the statute; a prohibition upon expenditures is the equivalent of a ban upon freedom of speech, press and assembly, rights which cannot be exercised by appellees without expenditures.

It is submitted that a prohibition upon expenditures in connection with an election is tantamount to, and may not be distinguished from, a prohibition upon the activities which such expenditures necessarily finance and underwrite. Indeed, the outlawry of expenditures emphasizes rather than detracts from the constitutional infirmities of the statute. This is so because whatever the boundaries of the meaning of the term "expenditures",[4] there can be no question that the effect of the statute is to outlaw the exercise of any right in connection with federal elections, since it is difficult to conceive of any activity in which appellees might engage in connection with an election which would not require the outlay of some funds.

This measure thus on its face would prevent a labor organization from holding a meeting for the purpose of advocating

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[4] We discuss the constitutional implications flowing from the vagueness of this term *infra*, p. 51.

the election or defeat of a particular political candidate. It would preclude a labor organization from organizing a public gathering to advocate the election of a candidate pledged to the defeat of such a measure as Section 304.

A labor organization under this statute could not place at the disposal of a candidate its own hall. It could not engage radio time to denounce a candidate who had identified himself with interests fundamentally opposed to those basic to the interests of the defendants. Nor could it pay the salary or expenses of an individual for the purpose of permitting him to participate in a political campaign.

Handbills, placards or union newspapers advising the union membership of the voting records of public officials could not be published or distributed at election time to advocate either the election of labor's friends or the defeat of labor's enemies. Paid advertisements and radio publications for the same purposes would be likewise proscribed.

No matter how dangerous the threat presented by a candidate to the fundamental interests of a labor organization, it is powerless under this law to speak and to inform the people of its views. It could not send to a single member a penny postcard dealing with such a candidate. It could not even send a delegate or observer to a political convention.

It could oppose bad laws but not "in connection with any election". It could endorse good laws but at all times both its opposition and its endorsement would be undertaken at the peril of crossing the line at which such opposition or endorsement or advocacy could be regarded as being "in connection with any election".

Moreover, a labor organization could not sponsor a public meeting in connection with an election for the purpose of hearing the views of candidates of various political parties with respect to issues of importance to its membership since such a meeting would inevitably require expenditures.

The traditional campaigns on the part of labor organizations prior to federal elections to "get out the vote" would, since they require expenditures, be proscribed by the statute. And the publication of voting guides and analyses of the voting records of candidates would likewise be condemned.

A recent case, *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 69 N.E. (2d) 115, disapproving a proposed Massachusetts ban on expenditures by labor organizations similar to that contained in Section 304, establishes both that a ban upon union expenditures in elections is equivalent to a ban upon the exercise of civil rights which such expenditures finance and that a prohibition in that form broadly violates constitutional rights.

The proposed law provided:

> "No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, or any company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth, no officer or agent acting in behalf of any corporation mentioned in this section, and no labor union or any person acting in behalf thereof shall directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters."

The Supreme Judicial Court of Massachusetts unanimously held that the proposed law was an unconstitutional invasion of freedom of the press.* The following language used by the court, in our view, completely disposes of Section 304:

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*The only other states in addition to Massachusetts which have attempted to legislate with respect to contributions and expenditures by labor unions in connection with political affairs are Alabama, Colorado, Indiana, Oregon, Pennsylvania and Texas. The Alabama provision (Ala. Code Supp. 1943, Tit. 26, Sec. 3920) forbidding political contributions by unions was struck down in *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944). The Alabama Supreme Court held that a prohibition in the statute on an organization of employers of labor was invalid under Section 45 of the Alabama Constitution since it bore "no relation to the subject of the Act" (at p. 830). The Court reasoned that since the intent of the legislature had been to equalize employers and employees where employers were freed of the prohibition, employees were likewise freed. The Colorado prohibi-

"The liberty of the press is enjoyed, not only by individuals, but also by associations of individuals such as labor unions (*Hague* v. *Committee for Industrial Organization*, 307 U. S. 496), and even by corporations, although a corporation is not a 'citizen' and must find its protection against abridgment of its liberty by State action in the due process clause rather than the privileges and immunities clause of the Fourteenth Amendment. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 243, 244. Compare *Western Turf Association* v. *Greenberg*, 204 U. S. 359, 363, *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 527, and for an appreciation of the divergence in the authorities *Independent Service Corp.* v. *Tousant* (Dist. Mass.) 56 Fed. Sup. 75, 78. See also Rutledge, J., in *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 404.

"One of the chief reasons for freedom of the press is to insure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. Brandeis, J., in *Whitney* v. *California*, 274 U. S. 357, 375. Hughes, C. J., in *Stromberg* v. *California*, 283 U. S. 359, 369. Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups', for the purpose of advancing causes in which

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tion (Colo. Stat. Ann., Michie, Supp. 1944) was outlawed in *American Federation of Labor* v. *Reilly*, 113 Colo. 90, 155 P.(2d) 145 (1944), on the ground that it was inseparable from the constitutional requirements of incorporation of labor unions. An Oregon prohibition forbidding political expenditures by labor unions (Ore. Code Ann., Secs. 102-909 (1940) was stricken as inseparable from other unconstitutional aspects of the statute in *American Federation of Labor* v. *Bain*, 165 Or. 183, 106 P (2d) 544 (1940).

A Texas prohibition upon political contributions by labor organizations (Tex. Stat. Rev. Civ., tit. 83, art. 5154a, Secs. 46-47 (Vernon, Supp. 1943)) was upheld in *American Federation of Labor* v. *Mann*, 188 S.W. (2d) 276. It should be noted, however, in connection with this decision that (1) the approved legislation dealt only with contributions and not with expenditures; (2) there was no extensive discussion on the merits, the statute being approved on the basis that the Federal Congress had passed similar legislation in the Smith Connally Act; (3) the Court was not confronted with a specific situation in which the operation of the statute had impinged upon the exercise of civil rights since the statute was challenged in a declaratory judgment proceeding.

The Indiana (Burns Ind. Stat. Ann. 1933, 1945 Supp. tit. 29, 5712) and Pennsylvania (Pa. Stat. Ann. Purdon 1941, tit. 25, sec. 3225) statutes ban political contributions by labor organizations and have never been construed.

they believe. They have a right to engage in printing and circulating their views, and in advocating their causes in public assemblies and over the radio. All this costs money, and if all use of money were to be denied them the result would be to abridge even to the vanishing point any effective freedom of speech, liberty of the press, and right of peaceable assembly.

"It remains to apply these principles to the proposed law under discussion. We do not doubt that labor unions, like individuals, may be curbed by corrupt practices acts and prevented from dumping immense sums of money into political campaigns. But under the proposed law the political activities of labor unions are not regulated or curbed but are substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled . . ."

We submit that no other conclusion is possible here. The statutory prohibition upon expenditures creates a blackout of freedom of boundless dimension and the restraints imposed upon appellees in this case are inherent in the nature of the statute and are not an accidentally restrictive application. On its face, the instant statute is plainly condemned by the rule "that statutes which include prohibitions fairly within the prohibition of a free press are void." *Winters* v. *People of New York*, decided March 29, 1948, No. 3, this Term, Slip Opinion, p. 5. See also *Thornhill* v. *Alabama*, 318 U. S. 88, 97, and cases cited.

C. No valid justification exists for the prohibition and the statute does not meet the tests which must be applied where curbs upon civil rights are involved.

1. The invasion of civil rights may not be justified by resort to the conventional standards which are invoked to justify commercial regulation.

Ordinarily when regulatory legislation is challenged on the ground that it conflicts with the individual's interests (pecuniary or otherwise) in being free from regulation, its validity

can be established by a showing that a permissible legislative power is being reasonably exercised. Regulatory legislation must inevitably impinge on, and limit some individual's private interest in being free from regulation. But under our form of government the authority to make the judgment as to whose interests must yield is vested in the legislature. *Miller* v. *Schoene*, 276 U. S. 272. Indeed, a premise of our democratic system is that the individual is able to participate in the legislative decisions affecting his private interests through the ordinary political processes and the exercise of his right to be heard.

However, when the right to engage in political activity is curtailed the opportunity to influence and receive redress from adverse official action is cut off. It is therefore not the case that the right of freedom of expression is simply one of a multitude of private interests which the legislature may treat with as it sees fit. The right of free expression and the right to engage in political activity is a basic right because without it the means of obtaining redress against a bad law, the means of insuring peaceful change in a democratic society, is lost. Thus this Court, in *Schneider* v. *New Jersey*, 308 U. S. 147, 161, stated:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.
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> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effects of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions".

See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 101, 102; *Bridges* v. *California*, 314 U. S. 252, 262, 263.

Because of this key relationship of civil rights to our political processes, this Court has recognized that Congress cannot be its own judge of the propriety of curtailing rights of political expression to achieve other ends and that the courts themselves must undertake a special responsibility for the protection of such rights. This is obviously imperative because, unless some non-political agency intervenes, interferences with the political mechanism may well perpetuate themselves. This thought was given expression by Mr. Justice Stone in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152–153, in which he stated:

> "It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. 'On restrictions upon the right to vote, see *Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286 U. S. 73; on restraints upon the dissemination of information, see *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 713–714, 718–720, 722; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Lovell* v. *Griffin*, *supra* [303 U. S. 444]; on interferences with political organizations, see *Stromberg* v. *California*, *supra* [283 U. S. 359], 369; *Fiske* v. *Kansas*, 274 U. S. 380; *Whitney* v. *California*, 274 U. S. 357, 373–378; *Herndon* v. *Lowry*, 301 U. S. 242; and see Holmes, J., in *Gitlow* v. *New York*, 268 U. S. 652, 673; as to prohibition of peaceable assembly, see *De Jonge* v. *Oregon*, 299 U. S. 353, 365.
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> "Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, *Pierce* v. *Society of Sisters*, 268 U. S. 510, or national, *Meyer* v. *Nebraska*, 262 U. S. 390; *Bartels* v. *Iowa*, 262 U. S. 404; *Farrington* v. *Tokushige*, 273 U. S. 484, or racial minorities, *Nixon* v. *Herndon*, *supra*; *Nixon* v. *Condon*, *supra*; whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

The teaching of this Court in a long series of cases is that legislation of the type here under consideration which invades

basic rights can avoid a clash with the Constitution only if three basic requirements are met:

(1) The statute must be narrowly drawn to deal with the precise evil which the legislature is seeking to curb. *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *DeJonge* v. *Oregon*, 299 U. S. 353.

(2) The conduct in the area of civil rights which is sought to be regulated must be specifically defined so as to leave the individual both secure in his right to engage in conduct excluded by the statute and free of the fear of discrimination in enforcement which a loosely drawn statute invites. *Cantwell* v. *Connecticut*, 310 U. S. 296; *Thornhill* v. *Alabama*, 310 U. S. 88; *Herndon* v. *Lowry*, 301 U. S. 242; *Stromberg* v. *California*, 283 U. S. 359.

(3) Such conduct must present such a clear and present danger to a substantial interest which the State has a right to safeguard as to justify the restraint. *Bridges* v. *California*, 314 U. S. 252, 261; *West Virginia State Board* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516, 527; *Herndon* v. *Lowry*, 301 U. S. 242, 256; *Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Hartzel* v. *United States*, 322 U. S. 680, 687; *Pennekamp* v. *Florida*, 328 U. S. 331, 352–353.

The present case, particularly because it directly involves a prohibition in the field of political rights, requires that the tests above delineated be fully met if the statute is to survive the Constitution. Nor does *United Public Workers* v. *Mitchell*, 330 U. S. 75, hold to the contrary. In distinguishing this case, heavily relied upon by the Government in the court below, that court stated (R. 18):

> "In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of United Public Workers v. Mitchell, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning the conduct of its own employees. cf. United States v. Wurzbach, 280 U. S. 398. The activities in which Mitchell had engaged and which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can

hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the Mitchell case, Moreover, the Mitchell case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composite entities and not individuals, and by their very nature can make no move which does not involve some expenditure."

We must emphasize that the present case peculiarly involves the order of rights the curtailment of which brings into play the special considerations outlined above. The Government in its brief signally fails to accord proper recognition to the peculiar burden which necessarily must be overcome to avoid a conflict with the First Amendment. The Government throughout its brief never wholly abandons the assumption (see, for example, Government Brief, pp. 55–57, 62–68), appropriate only to a justification of commercial regulatory legislation, that once the permissibility of the object of the regulation is shown little more is needed. More particularly, the Government has in effect assumed that Congress has a freer hand when dealing with political activity than with other types of subject matter when precisely the opposite is true.

But, solution to our problem is not advanced by a demonstration that the Government in the past has regulated other aspects of the electoral process, such as contributions to political campaigns by corporations. Nor is an impressive compliance with the appropriate test for justifying this legislation supplied by allusions to the British experience (see Government Brief, pp. 83–86). All that the Government's recital of the British experience demonstrates is that the activities of trade unions in connection with elections is an appropriate

subject of regulation. Indeed, insofar as any conclusions may be drawn from the British experience, as we will show in detail below, that experience demonstrates that outright prohibition, such as is involved here, is not appropriate.* We believe that this fundamental failure on the part of the Government to give due accord to the nature of the subject matter here involved has resulted in its attempt to find justification for this statute dealing with expenditures in statutes dealing with wholly different problems. This approach has led the Government, moreover, into ignoring the historic character of labor organizations as entities dedicated to political activity and to disregard the key significance of the majority rule principle in the American experience.

Most basically, the Government's failure to subject the statute to an appropriately stringent constitutional test has led it to disregard the fact that the rights of political expression here obliterated are the surest guarantee of the very electoral freedom which, it is claimed, the statute is designed to safeguard.

2. The statute may not be justified on the ground that it is required to preserve free elections; this claimed justification for the statute is the strongest argument against it.

The Government has sought to justify the statute on the ground that it removes the peril of corruption which comes into being when large sums of money are thrown into an election (Br. pp. 68–71). We submit that no clear and present danger exists that the exercise of appellees' right in this case to inform working people not to vote for a candidate creates a danger to our electoral process.

On the contrary, it is the suppression of the right of free expression in connection with elections which, it has been rec-

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*The same may be said with respect to the use made of the comments in the article by Overacker, *Labor's Political Contributions*, 54 Pol. Sc. Quart. 56 (1939). This writer makes it unmistakably clear that a total curb upon labor's political contributions would be undesirable. The writer also suggests that the same reasons for banning political contributions by corporations do not exist in the case of labor unions because of fundamental differences in the decision-making process.

ognized from the beginning of our legislative experience, has created the danger to the purity of the electoral process.[7]

In the Hearings before the House Committee on the Election of Presidents, March 12, 1906 (extensively discussed by the Government in its Brief at pp. 14 to 17), Bourke Cockran, one of the most active proponents of electoral reform legislation, made it clear that freedom of political expression was deemed indispensable to a sound electoral system. He thus testified in support of his proposed bills (at p. 40):

> "The spectacle of this country passing upon a question so intricate as that involved in 1896 . . . the information which the people obtain every four years about the working of their government in all its departments, as well as in the fundamental propositions involved in the legislation likely to affect their condition, is something that has never been witnessed on this earth before, and, to my mind, this great national quadrennial popular debate is the source from which all the meritorious legislation of this country has proceeded, and it is the chief bulwark of the Government under which we live.
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> "Whatever else may happen, I don't want the vigor, efficiency, or scope of these Presidential discussions limited, impaired or endangered in the slightest degree. Whatever we may do to check corruption, I hope we will not tolerate any suggestion likely to result in diminishing the number of meetings at which citizens have been in the habit of discussing grave problems of government, of the volume of literature circulated for their information. At the very threshold of an attempt to prevent expenditures for corruption we should take precautions to maintain and even increase expenditures for enlightenment".[8]

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[7] See Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 8 (1934).

[8] It is appropriate to point out in connection with the Government's citation of the background of the 1907, 1909 and 1925 corrupt practices measures that they reflected a social revolt by "plain people of small means" (Government Brief, p. 15) of considerable proportions. These measures must be read in their social and political context of protest against the subversion of the electoral process by American business monopoly. See, *Hearings* of the 1906 House Committee, *supra*; Tarbell, *The Nationalizing of Business* (1936), p. 257; Slosson, *The Great Crusade and After* (1931), p. 94; Adams, *The Incredible Era* (1939), pp. 128–129; Loth, *Public Plunder* (1938), pp. 242–246; Bassett, *A Short History of the United States* (1924), pp. 711, 723.

This Court has made it clear that the very purpose of protecting civil rights is to insure the integrity of our democratic scheme and the purity of the electoral process itself.* Because a suppression of civil rights impairs political freedom and invites corruption, this Court has consistently safeguarded free expression. See, *supra*, pp. 25–26.

In *Whitney* v. *California*, 274 U. S. 357, Justice Brandeis expressed the basic philosophy which has moved this Court in civil rights matters. Justice Brandeis there stated (at p. 375):

> "Those who won our independence . . . recognized the risks to which all human institutions are subject. But they knew *that order cannot be secured merely through fear of punishment for its infraction;* that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; *that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.*" (Italics supplied.)

In *Stromberg* v. *California*, 283 U. S. 359, 369, Chief Justice Hughes held:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive

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We submit that the statutes, when considered in their proper environment, do not support the measure under consideration but seem rather to warn of the dangers to a democratic society which are implicit in a denial to labor organizations of the right of political activity. It should also be pointed out that a preoccupation only with form rather than with substance could lead to the conclusion that the statutory response to the Armstrong Committee revelations with respect to use of policy-holders' funds for political activities serves as a precedent for barring the use of members' dues by labor organizations for political activities.

*And it was viewed in that very light from the beginnings of our form of government. Madison, in his report on the Virginia Resolutions directed against the Alien and Sedition laws of 1908 stated:

"Of this act it is affirmed—1. That it exercises, in like manner, a power not delegated by the Constitution; 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution; 3. That this is a power which, more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public character and measures, and of freely communicating thereon, which has ever been justly deemed the only effectual guardian of every other right." IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (1836), 561.

to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

In *DeJonge* v. *Oregon*, 299 U. S. 353, the Court adverted to the "imperative" need "to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government".

In cases involving freedom of the press, the Court has repeatedly noted the overriding political significance in our policy of protecting civil rights. See, for example, *Near* v. *Minnesota*, *supra* (at p. 719), and *Grosjean* v. *American Press Co., Inc.*, *supra*.

The central theme which unifies and explains the cases in which civil rights are protected is that the political majority may not immunize itself from political criticism which its actions occasion. Yet who can deny that in this very case we are confronted with an attempt by Congress to immunize itself from the political criticism resulting from the passage of the Labor-Management Relations Act, 1947? In short, if we protect civil rights in order to make available to our people the mechanism for changing a bad law and to keep alive in the minority the conviction that the current majority may be unseated through the operation of the political process, then this is obviously a case which calls for the prompt and unhesitating invalidation of Section 304 by this Court."

" The injury which has been done by Section 304 has a double aspect. In the first place, the law gags the political voice of that group most directly and most adversely affected by the Labor-Management Relations Act, 1947. In the second place, it accomplishes this result in a discriminatory fashion. This is so because other groups such as anti-labor unincorporated associations are free of the restraints which are imposed upon labor organizations. Congress has thus on the one hand silenced criticism of those groups who suffered the most profound injury as the result of passage of the Labor-Management Relations Act, 1947, but abated in no respect the right of those groups which were instrumental in passing the law and who have dedicated themselves to maintaining it. The constitutional implications of this substitution of a monopoly for free trade in ideas are discussed *infra*.

Section 304 does not preserve the purity of the electoral process. It perverts the electoral process. Thus, in the instant case, far from averting a clear and present danger the statutory suppression will create a danger that those who sponsored and approved Section 304 may perpetuate themselves in office because the political voice of the millions adversely affected by the law has been effectively stifled.

The Government contends (Brief, pp. 68–71) that this political sterilization of appellees and those represented by appellees is necessary in order to eliminate the influence of great aggregate wealth in connection with elections. But this is not a law which imposes a ceiling upon expenditures. As a matter of fact, the Government concedes (Brief, pp. 58, 60), that the workers represented by appellees could form a new organization and legally "subvert" the electoral process through their newly aggregated wealth.

If the statute is to be justified it cannot be justified on an "aggregate wealth" theory. This is so not only because Congress has failed, as the Constitution requires it to do (see cases cited *supra*, p. 27), to draw the line at the point at which the legitimate exercise of rights ends and the claimed subversion of elections through the aggregate wealth of trade union members begins, but also because aggregate wealth expended by other unincorporated associations in connection with an election is not subject to the statute. The right to make such expenditures is denied only to those unincorporated associations which are labor organizations.

We now turn to a consideration of this aspect of the Government's case.

3. The participation by labor organizations in political life is an important and legitimate means for the effective exercise of political rights by working men and women.

The statute, when examined in the context of the Labor-Management Relations Act, 1947, rests upon the view that while the collective activity of working people in labor organizations is desirable and important in connection with economic activity, it is to be discouraged in the political realm. The law seeks to inject into the political process the same notion of

individual rights which national policy has consistently rejected in connection with collective bargaining. This attempt to restore to working people the disadvantages which anteceded the recognition of trade unions should be recognized for what it is—namely, an attempt to destroy or impoverish a right by outlawing the means for its effective exercise.

As this Court well knows, in our society where few working people are in a position to make large expenditures, if political freedom is to be effectively exercised, individuals must necessarily express their views through groups. Moreover, the Constitution itself by protecting the right of freedom of assembly recognizes the importance of preserving group rights. See *Thomas* v. *Collins, supra* (at p. 547).

Long ago this Court stated, in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418:

> "Society itself is an organization, and does not object to organization for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and invite others to join their ranks, thereby making available the strength, influence, and power that come from such association."

In 1921, in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, the Court said of labor organizations:

> "They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer."

In 1932 in the Norris-LaGuardia Act, Section 102, the broad right of workers to associate was again affirmatively made an object of federal protection.

The National Labor Relations Act in 1935 expressly gave protection to "the exercise by workers of full freedom of as-

sociation". In 1937 the Court, in upholding the validity of the National Labor Relations Act, held in *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34:

> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. . . . Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it."

See also *Texas and New Orleans Railroad Co.* v. *Railway and Steamship Clerks*, 281 U. S. 548; *Hague* v. *C.I.O.*, 307 U. S. 496; *Thomas* v. *Collins*, *supra*.

What we have been saying up to this point amounts to this: The protection of workers in their right to act collectively for the purpose of safeguarding their legitimate interests has a long genealogy of substance. In Section 304 we encounter for the first time in a generation an attempt by Congress to reverse this historic trend and to prohibit collective action on the part of working people for lawful purposes.

Such a reversal of national policy can only be justified on the ground that political activity is something alien or hostile to the normal concerns of trade unions. But this is a premise which is so false as to be ludicrous. As one writer has put it:

> "*Labor has always been in politics.*
>
> "It is difficult to conceive of any functioning labor organization which does not take part in politics. For the leaders of labor, politics was, and is, the other side of the trade-union coin.
>
> "Every labor organization is, in principle, dedicated to the protection of the rights of its members and to the improvement of their conditions. If those objectives are to be attained, labor must ask for legislation of many kinds. Whether a union succeeds or fails in getting its demands depends entirely upon whether the legislators are for labor or against labor. In turn, very naturally, labor supports those legislators friendly to labor, and repudiates those who are anti-labor.
>
> "It has always been so.
>
> "As far back as 1886, Samuel Gompers said: 'We regard with pleasure the recent political action of organized

workingmen of this country, and by which they have demonstrated that they are determined to exhibit their political power.'" Joseph Gaer, *"The First Round"*, New York (1944), p. 49.

In testifying before the House Committee investigating campaign expenditures, Sidney Hillman, then chairman of the CIO Political Action Committee, pointed out:

> "Organizations of men and women, united by a common interest, for the advancement of their own and the general welfare through political action, are as old as our nation. The most casual study of our history discloses that organizations of workers, like organizations of farmers and business, have long been concerned with and have actively participated in politics. The activity of such groups in shaping the course of their government is essential to the functioning of our democracy.
>
> "Experience early taught organized labor that it cannot discharge its obligation to protect and promote the welfare of its members as workers and citizens through the processes of collective bargaining alone. The struggles of labor on the economic front have always been interwoven with its efforts in the political field for social legislation to protect the immediate economic interests of its members, as well as in such broader fields as education, public health, taxation and business regulation.
>
> "Labor's participation in political activity has grown with the growth of the organized labor movement itself. Moreover, our national experience since 1929 has served to teach labor and all Americans that in this complex modern industrial society of ours, the national well-being is increasingly dependent upon the wise and progressive exercise of the powers of government." *Op. cit. supra*, p. 237.[21]

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[21] The best available account of the forces which have stimulated labor's political activities is Taft, *Labor's Changing Political Line*, 43 Journal of Pol. Ec. 634 (1937).

The following texts document the historic role of labor in American political life:

Beard, *The American Labor Movement, A Short History* (1935), pp. 33–46, 54–61, 80–85, 103–112, 165–171; Bimba, *The History of the American Working Class* (1927), pp. 84–89, 204–208, 323–330; Carroll, *Labor and Politics* (1923), pp. 27–54, 80–138; Childs, *Labor and Capital in National Politics* (1930); Commons and Associates, *History of Labor in the United States*, vols. I and II (1918), Vol. I, pp. 169–335, 369, 454–471, 522, 535, 548–559; Vol. II, pp. 85–109, 124–130, 138–146, 153–155, 168–171, 240–251, 324, 341–342, 351–353, 461–470, 488–493; Daugherty, *Labor*

With the increased participation of government in our economic life, workers are forced into politics through their unions in order to preserve their economic security and standard of living. If an individual is helpless in dealing with his employer, then how can it be said that he is more able to deal with the powerful employer-dominated political interests which, unless restrained, can decisively fix or alter the terms and conditions under which he must live? In sheer self-protection he must associate with others in order to preserve those political values which enforce and promote his economic interests. He must organize politically in order to defend the gains achieved through his economic strength against political attack. He must organize politically in order to meet the organized political attack of other interests in our national life. And he must organize politically in order to safeguard and promote his right to form and join unions and his right to bargain collectively and to strike."

Fundamentally the premise of those who have enacted Section 304 is that labor, in order to achieve its goals, is confined to its economic power. The sponsors of Section 304 apparently believe that the techniques of economic warfare should be encouraged and that labor organizations' time-honored resort to political action should be made a crime. Surely, an objective of legislative policy which seeks the encouragement of strikes in a highly organized economy, in preference to orderly

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Problems in American Industry (1933), pp. 622–629; Foner, *Labor Movement in the United States* (1947), pp. 104–105, 130–134, 140, 149–166, 210–217, 245–248, 262–263, 334–336, 357–359, 372–373, 423–429, 475; Harris, *American Labor* (1938), pp. 33–55, 65–69; Hoxie, *Trade Unionism in the United States* (1917), pp. 78–102; Lorwin, *The American Federation of Labor* (1933), pp. 88–93, 123–126, 221–226, 351, 397–425; Millis and Montgomery, *Organized Labor* (1945), pp. 7, 10, 27, 29–31, 34, 42n, 51; 52n, 54–55, 57n, 62, 67, 71, 81, 91, 108–111, 118, 123–129, 141, 143, 149, 178, 181–188, 232–238, 303–305, 311, 313, 317–320, 348–349, 600, 669, 829, 890; Perlman, *A History of Trade Unionism in the United States* (1929), pp. 146–160, 285–294; Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), pp. 150–166, 525–537; Schlesinger, *The Age of Jackson* (1945), pp. 132–158, 180–185; Walsh, *C. I. O., Industrial Unionism in Action* (1937), pp. 248–271; Ware, *The Labor Movement in the United States, 1860–1895* (1929), pp. 350–370; Ware, *The Industrial Worker, 1840–1860* (1924) pp. 154–162.

"One of the most powerful factors which brought labor into political life was the evil of "Government by Injunction." Lorwin, *The American Federation of Labor.* (1933), pp. 89, 90.

political action, is not such a consideration as to outweigh the sweeping prohibition upon civil rights which has been written into Section 304.

The attempt of the Government to justify Section 304 by resort to a theory of "pork chops," of pure and simple "business unionism" is wholly at odds with the realities of trade unionism. Moreover, the Government itself has, in construing the Legislative Reorganization Act of 1946 (Ch. 753, Pub. 601, 79th Cong. 2nd Sess.) adopted a more realistic view of the nature and functioning of labor organizations. Section 307 of that Act subjects to the provisions of Title III (Federal Regulation of Lobbying Act) any organization "the principal purpose of which is to aid, in the accomplishment of any of the following purposes:

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

Despite the fact that this legislation is addressed to organizations having the above as their "principal" purpose and despite the fact that the legislative history of the measure states that, "it does not apply to organizations formed for other purposes whose efforts to influence legislation are merely incidental to the purposes for which formed",[18] the Government has construed it to apply to appellee Congress of Industrial Organizations. See Statement by Irving R. Kaufman, Special Assistant to the Attorney General, to Senate Committee on Expenditures in the Executive Departments, March 17, 1948.

If a labor organization is deemed to have as a "principal" purpose legislative activity, how can the instant prohibition be justified, as the Government contends, upon the theory that political activity is foreign to its fundamental purposes?

4. If appellees have a constitutional right to engage in legislative and political activity, they cannot be deprived of that right because that activity is in connection with an election.

It cannot be denied that, not as an incidental or casual matter but in fulfillment of their basic nature and purpose, labor

[18] S. Rep. No. 400, 79th Cong. 2d. Sess., p. 27.

organizations engage, and have always engaged, in legislative and political activities. And certainly no one could challenge the right of a labor organization to engage in such activities where they happen to be unrelated to a federal election. See, for example, *Hague* v. *CIO, supra.* What are the constitutional consequences which flow from the fact that otherwise protected activity takes place under circumstances to which the label may be attached, "in connection with any federal election"?

We submit that the process of engaging in and providing support for a legislative program is so fluid that a constitutional line may not be effectively drawn between such activity and political activity "in connection with any federal election".[*] This can be clearly seen even by a cursory glance at a typical pattern of union legislative and political activity.

The political activity of a labor organization is initiated by the adoption at its convention of a program covering basic legislative and economic objectives. This program is voted upon by the duly elected delegates to the convention.

Since conventions occur at intervals of no less than a year, the interim determination of policy is made by an executive board of the organization, empowered under its constitution to fix policy. All legislative and political activity which is undertaken by the labor organization is undertaken pursuant to the democratically arrived at decisions of the convention or the executive board.

After the establishment of policy on such matters, for example, as price control, health insurance, taxation, civil rights, anti-labor legislation, and the like, members of both the parent body and the local union are charged with the task of acquainting both members and the general public with the union's position on these issues.

Where no election contest is currently in the offing, the process of legislative and political activity consists mainly of education through leaflets, radio addresses, articles in the labor press, and the like. Moreover, legislative representatives

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[*] Moreover, the phrase "in connection with any federal election" is so vague and indefinite as to constitute a previous general restraint upon the exercise by labor organizations of civil rights in connection with legislative and political activities not literally reached by it.

of the various unions, registered under the Federal Regulation of Lobbying Act, call the union's program to the attention of members of Congress.

As members of the community become educated to the issues and to the point of view of the labor organization, they demand that candidates for public office and political conventions be nominated who support the program of the organization. To insure the achievement to this end, local union political action committees everywhere systematically take part in primaries and in the workings of conventions which establish a program and select candidates for federal office."[18]

There is no fixed point at which it can accurately be said that activity is or is not "in connection with any federal election". A political process naturally has as its objective and culmination an election, but the relationship between the election (and its precedent steps, filing, nomination, and campaigning) on the one hand, and the process of formulating issues and educating the members of the community to the nature of the issues, on the other, is a highly fluid one.

The formulation of issues, the emergence of a platform, the selection of a candidate, the conduct of the election, are not parts of a formal cycle with marked differences. All of these activities have a dynamic and inseparable interrelationship with the result that if it is criminal to engage in one the right to engage in all the others is likewise blighted.

The expenditure of funds on behalf of a candidate or in connection with an election is not a different order of activity from that which preceded the emergence of the candidate upon the scene or the approach of the election. In the process of a political discussion and legislative activity in which unions engage, a point is reached at which particular individuals who are candidates for office become identified with the platform and the program which the union supports. Support of the candidate is merely a more effective, a more goal-conscious support of the program.

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[18] Of course this is only as it should be. For, historically, the direct primary was instituted in order that the general public could participate in the selection of candidates and in the formation of program. See Merriam and Gosnell, *The American Party System* (1929), pp. 245, 246. A similar purpose produced the Seventeenth Amendment providing for the popular election of Senators.

The basic point is that the entire process from the education of the community to the issues involved to participation in the campaign is forwarded by the presentation of ideas in the classic constitutional sense.

The expenditures which were made in this case are typical of expenditures which are made in support of candidates for federal office whose political philosophy conforms to the aspirations and programs of the labor organizations in the community. The publication and the activities which such expenditures underwrite fall indisputably within the area of free speech and free press. No less than the educational and preelection program itself, an election campaign is "a free trade in ideas" where the "best test of truth is the power of thought to get itself accepted in the competition of the market". *Abrams* v. *U. S.*, 250 U. S. 616, 630.

Legislative and political activity on the part of trade unions is not a compendium of abstract principles or a wishful beckoning to a better life. It is a program of action. It is a program which presents to the people of the community vital, concrete choices. To suggest that this program may be forwarded and constitutionally protected as long as education is promoted but not when candidates are to be elected, would be to allow the right of free speech to function in a vacuum. Free speech would not be the precious right it is if the constitutional shield were withdrawn from it at the point where it confronts men with a practical choice in the realm of conduct. Cf. *Abrams* v. *U. S.*, *supra*.

Ideas do not lose constitutional standing because they invite to a course of action. And the purpose of the First Amendment is not simply to protect the expression of esoteric or trivial views but is primarily to enable all persons to be heard on the immediate, pressing, and controversial issues of public importance vital to all.

> "No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression." *Bridges* v. *California*, *supra* (at p. 269).

In *West Virginia* v. *Barnette, supra* (at p. 642), the Court said:

> "But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

In *Thomas* v. *Collins, supra,* this Court invalidated a Texas statute requiring paid labor union organizers to register with the Secretary of State and secure an organizer's card before soliciting members within the state. A national labor leader addressed a mass meeting and in the course of his address invited one person specifically and all his hearers generally to join the union. The problem which faced the Court was whether a constitutional line could validly be drawn between the speech and the solicitation, just as the Court in this case is faced with the problem of whether a constitutional line may validly be drawn between protected activity not in connection with an election and prohibited activity in connection with an election.

The Court pointed out first that the distinction upon which the state rested in that case between solicitation and free speech was a distinction without a constitutional basis, and, second, that it was a distinction which imperiled the right of free discussion. Thus, Justice Rutledge stated for the Court (at p. 535):

> "Workingmen do not lack capacity for making rational connections. They would understand, or some would, that the president of U.A.W. and vice president of C.I.O., addressing an organization meeting, was not urging merely a philosophic attachment to abstract principles of unionism, disconnected from the business immediately at hand. The feat would be incredible for a national leader, addressing such a meeting, lauding unions and their principles, urging adherence to union philosophy, not also and thereby to suggest attachment to the union by becoming a member.
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> "Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some

as a invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

"Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card."

The Court insisted that speech cannot be gagged because it induces to action, and stated (at pp. 536–37):

"When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and to becloud even this with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end. A restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment.

"We do not mean to say there is not, in many circumstances, a difference between urging a course of action and merely giving and acquiring information. On the other hand, history has not been without periods when the search for knowledge alone was banned. Of this we may assume the men who wrote the Bill of Rights were aware. But the protection they sought was not solely for persons in intellectual pursuits. It extends to more than

abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams* v. *U. S.*, 250 U. S. 616, 624, and *Gitlow* v. *New York*, 268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes. Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that protections are given."

In the context of political and legislative activity, the distinction between education and advocacy on the one hand and elections on the other is not one of kind and indeed scarely one of degree. It is assuredly a distinction without constitutional dimension. If the right to speak in behalf of a legislative program is to be freely exercised, it must include the right to endorse a candidate who embraces that program. Fair exercise of the former right necessarily involves the latter. Every civil right functions constitutionally through forms appropriate to its purpose and history. Cf. *Gompers* v. *U. S.*, 233 U. S. 604, 610.

To suggest that a constitutional right to engage in political activity is lost at the point when the activity enters the area of the election is to disfigure the "essential attributes of that liberty". *Near* v. *Minnesota, supra.*

We turn now to a consideration of the contention that the right is lost at that point because its exercise is financed by the dues of a "coerced" minority.

5. The use of union dues by appellees to finance the publication could not create substantive evils of sufficient weight to warrant the curtailment of liberty of expression.

One justification which has been suggested for the restriction imposed herein is that the minority members of trade unions are "coerced" into the financial support of political objectives with which they are not in sympathy.

If, as cannot be denied, political activity is directed toward interests in which trade unions are legitimately involved, no basis exists for atomizing the collective strength of the union in the manner achieved by Section 304. If the minority members may be required to acquiesce in the expenditure of their dues for the purpose of sponsoring and supporting a legisla-

tive and political program affecting the interests of the union, how can it be said that at the point where such activity may be most effective, namely, when it is directed to the support of a candidate identified with that program, that the interests of the minority then acquire a special character which the state may intervene to preserve even at the cost of destroying the exercise of political liberties?

The theory that labor organizations depart from their legitimate objectives when they engage in political activity and that therefore the minority needs legislative protection when this occurs ignores not only the nature and purpose of labor organizations, referred to in the previous sections of this brief, but their basic law, structure and method of operation as well.

The constitution of appellee Congress of Industrial Organizations expressly enumerates as a principal purpose,

> "To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy." *Constitution of the Congress of Industrial Organizations*, Article II, Fourth.

How can it be said, in view of the language of this provision, that the members of appellee Congress of Industrial Organizations are being "coerced" by political activity in a manner which is inconsistent with their membership?

It should be borne in mind that the statement of legislative purpose contained in its constitution has been repeatedly reaffirmed in resolutions democratically adopted by conventions called by appellee Congress of Industrial Organizations. These resolutions have unequivocally dedicated appellee to participation in political activities. See, for example, *Proceedings* of the Sixth (p. 239), Seventh (p. 209), Eighth (p. 291) and Ninth (pp. 108, 151) Constitutional Conventions of the Congress of Industrial Organizations.

If, as we have demonstrated, labor organizations have historically functioned in the political arena and if, as is clear from appellee's constitution and its convention proceedings, and the constitutions and by-laws of other labor organizations which are set out in Appendix II, it is a basic constitutional

aim of labor organizations to engage in political activity, then the Government's case reduces itself to a claim that the majority rule principle should be arbitrarily abrogated where political activity is involved.

But the activities in which appellee Congress of Industrial Organizations engages are group activities which necessarily are based upon the majority rule principle.[11] When a worker joins a union he seeks the advantages that come from group strength. In doing so, he commits himself to a program of group action which may conceivably produce results contrary to his personal wishes in a particular case. But this does not mean, as the Government suggests, that he is "coerced".

For example, under American labor jurisprudence it has never been contended that once a seniority agreement has been negotiated in the interests of the group a particular employee is free to repudiate it on the ground that he was "coerced" into accepting it. If the employee involved suffers a disadvantage under the agreement in terms of his place on the seniority ladder, that injury is regarded as compensated for by the protection afforded by the seniority clause to the entire group and by the advantages accruing to the individual through his association with the group. Cf. *Steele* v. *Louisville & Nashville R. R.*, 323 U. S. 192.

No meaningful distinction may be drawn between the rights of the individual in the economic sphere and in the political sphere. The point is that by becoming a member of the group the individual subjects himself to the group decisions in the interest of a more comprehensive freedom with respect to all the legitimate objectives of the group which such association brings him. This principle was recognized by the court below (R. 17):

> "It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government,

[11] For a discussion of the role of this principle in American labor relations, see Weyand, *Majority Rule in Collective Bargaining*, 45 Col. Law Rev. 556 (1945).

is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor-Management Relations Act containing this Section 304 is an amendment."

In *DeMille* v. *American Federation of Radio Artists*, 31 Cal. (2d) 137, certiorari denied, April 19, 1948, No. 679, this Term, the California Supreme Court sitting in banc unanimously held that a union may engage in political activity and spend its funds for such purpose whenever such activity is for a lawful labor objective.

The court pointed out that mere disagreement with the majority does not absolve the dissenting minority from compliance with action taken in accordance with the union's constitution and by-laws. Moreover, the court pointed out that majority rule is imperative in this area if unions are to function effectively:

". . . the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The plaintiff in the *DeMille* case relied heavily upon the *Amalgamated Society of Railway Servants* v. *Osborne*, A. C. 87. The court's opinion establishes that that case in no way justifies the restraints here involved:

"Cases relied on by the plaintiff are consistent with the foregoing conclusion. He quotes the following *Amalga-*

mated Society of Railway Servants v. *Osborne*, 1 British Ruling Cases 56, at 94 (1909, 1 Law Re. Ch. Div. 163, at 195):

> 'It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose. It is really ludicrous to suggest that his choice is confined to voting on the day of the poll . . . Unless freedom of choice is to be reduced to an absurdity, it must extend to the whole conduct of the elector towards the candidate from beginning to end.'

> "In that case the court condemned as illegal and unauthorized under English Trade Union Acts an objective of a union to provide a fund for the election and maintenance of parliamentary representation, candidates for which should 'sign and accept the conditions of the Labour Party and be subject to their whip'. A double aspect of the case was the inhibition upon parliamentary conduct of an elected representative, and the coercion by demands for political and financial support at the expense of expulsion upon members of the trade union who might be opposed to the Labour Party candidate. The general language in the various opinions in that report must be deemed to have been confined to the point at issue, that is, the validity of the coercion upon members for their political and financial support of candidates for election who would be favorable to labor, an object clearly opposed to the public interest and which legislatures in this country have sought to control by the enactment of corrupt practices acts."

Of particular importance here is the observation of the court contained in the *DeMille* case with respect to the use of union funds to pay for a newspaper containing an article in support of a labor-endorsed candidate. The court stated:

> "An inference may not be drawn . . . to the effect that in England the courts would condemn the use of union funds derived from an assessment for the purpose of conducting educational programs and public debate on legislative matters touching labor interests. In fact, in *Linaker* v. *Pilcher* (1901) 70 L.J., K.B. 396, 87 L.T. 421, it was held that financial support of a newspaper was within the

lawful objects of the union. The opinion states at page 426 of 87 Law Times Reports that the enterprise was within the lawful objects of the society to improve the condition and protect the interests of its members because the newspaper was published entirely in the interests of the members of the trade union and to protect their interests." [*]

The entire contention of the Government that the statute may be justified on the ground of the protection of the rights of the minority is completely answered by the simple fact that Congress did not attempt to legislate with reference to this claimed evil. This is not a statute which requires the assent of union members before funds may be expended for political purposes. If every member of appellee Congress of Industrial Organizations had given his written consent to the publication involved herein, that fact would provide no defense to the indictment.

As the court below pointed out (R. 17):

"However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connec-

[*] Even though the *Osborne* decision was confined to the narrow ruling that compulsory levies on union members for the purpose of making contributions to Labor M.P.'s were *ultra vires*, it produced a wave of strikes. Three years later in 1913 the restriction of the *Osborne* case was lifted to the extent of permitting political contributions subject to majority decision by rank and file members. Those members who did not wish to contribute could under this dispensation by affirmative action "contract out" of a political assessment.

Subsequent to the 1926 General Strike, in 1927, the Conservatives passed new legislation which amended the requirements so that members were required affirmatively to "contract in" by signifying a positive desire to contribute even though a majority of the members had approved the contribution.

This new provision was widely attacked as an unwarranted crippling by the party in power of the very means of existence of the minority group. The reaction was a strengthening of the Labor Party which ultimately came to power in 1945 and thereafter repealed the limitations of the 1927 Act.

It should be made absolutely clear that although the 1927 law was harsh, at no time were union newspapers affected, a motion to include them in legislation having been rejected by the House of Commons as an undue limitation on political rights. See Rothschild, *Government Regulation of Trade Unions in Great Britain*, II, 38 Col. Law Rev. 1335, 1353, *et seq.* (1938).

> tion with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of voters of differing political party affiliation is not to say that all these may not be unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest."

No guide star is more firmly fixed in the constitutional firmament than that which requires a legislature to deal precisely with the situation constituting the abuse and thus to avoid a conflict with civil rights.

In *Lovell* v. *Griffin, supra* (p. 451), this Court stated that the ordinance there in question

> "is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of streets. The ordinance prohibits the distribution of literature of any kind, at any time, at any place, and in any manner without a permit from the city manager.
>
> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press."

In *DeJonge* v. *Oregon, supra* (at pp. 364, 365), the Court struck down a criminal syndicalism law, saying,

> "The people through their Legislatures may protect themselves against . . . abuse [of free speech or press]. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

In *Schneider* v. *New Jersey, supra* (at p. 162), the Court said:

> "this constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods to prevent littering. Amongst these is punishment of those who actually throw papers on the streets."

In *Thornhill* v. *Alabama*, *supra* (at p. 105), the Court struck down a broadly drawn anti-picketing ordinance and pointed out that the statute which is the source of the restriction on free speech must be "narrowly drawn to cover the precise situation giving rise to the danger". See also *Near* v. *Minnesota*, *supra*, and *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105, 116.

Of compelling significance is the decision of the Court in *Martin* v. *City of Struthers, Ohio*, *supra*. In that case the municipality passed an ordinance outlawing the distribution of literature when the person distributing it rang a doorbell or otherwise summoned the inmate of the residence to the door for the purpose of receiving such literature. Instead of meeting the problem by permitting such individual to decide for himself whether he would receive the literature, the municipality flatly outlawed the entire practice of ringing doorbells as a means of distributing literature. The Court pointed out (at p. 147), that an appropriate regulation would leave the decision as to whether distributors of literature might lawfully call at a home where it belongs, namely, with the homeowner or resident himself. The municipality, the Court held, could not substitute its judgment for the judgment of the individual as to whether such literature should be received. In the same way Congress here has substituted its judgment for the judgment of the union member as to whether his dues should be expended for political purposes.

It is thus clear that even if Congress could constitutionally protect the rights of the minority, as the Government contends, it certainly cannot go beyond that point, as it has here, and impose an outright prohibition upon all political activity, in connection with a federal election.

D. The vagueness of the statute condemns it as unconstitutional.

It is submitted that the phrase "expenditure in connection with any election . . . or in connection with any primary election or political convention or caucus" is so vague and indefinite as to conflict with the First as well as the Fifth and Sixth Amendments.

As this Court has recently pointed out in *Winters* v. *New York, supra*, Slip Opinion, pp. 2–3.:

> "The appellant contends that the subsection violates the right of free speech and press because it is vague and indefinite. It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. *Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry*, 301 U. S. 242, 258. A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press."

Where a statute involving civil rights is uncertain as to its reach, far more harm is done than in the case of an ordinary criminal statute where it matters less whether the activity on the penumbra of the statute is discouraged or not. Where, as here, the outer limits of the statute are so vague as to be virtually unascertainable, two evils result. One, an effective previous general restraint is imposed upon the exercise of rights which may actually be outside of the purview of the statute. Two, the very vagueness of the statute creates an opportunity for discrimination in its enforcement which is inconsistent with constitutional protections.

In *Stromberg* v. *California, supra* (at p. 369), the Court stated:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guarantee of liberty contained in the Fourteenth Amendment."

The vagueness of Section 304 is of such a character as to accomplish precisely that which was condemned by the Court in the *Stromberg* case, namely, "to permit the punishment of

the fair use" "of the opportunity for free political discussion". See, also, *Herndon* v. *Lowry*, 301 U. S. 242; *Near* v. *Minnesota, supra* (at p. 712); *Thornhill* v. *State of Alabama, supra* (at pp. 100–101); *Cantwell* v. *Connecticut, supra*.

Clearly in point, likewise, is the language already quoted from *Thomas* v. *Collins, supra*, in which the Court pointed out that the vagueness of the statute left no security for the exercise of the rights which the statute did not purport to reach."

This Court has frequently observed that the vagueness in a statute infringing civil rights lays the basis for discriminatory and unfair application. Moreover, such discrimination is frequently directed against minorities who more than other groups need the shield of constitutional protections.

Thus in *Jones* v. *City of Opelika*, 316 U. S. 584, 612 (dissenting opinion later made the opinion of the majority in 319 U. S. 103), the Court observed that the record showed that the license fee requirement struck down in that case had been discriminatorily imposed upon the members of Jehovah's Witnesses but not upon ministers of other faiths.

The Court stated (at p. 617):

> "We need not shut our eyes to the possibility that use may again be made of such taxes either by discrimination in enforcement or otherwise to suppress the unpalatable views of militant minorities such as Jehovah's Witnesses . . . As the evidence excluded in No. 280 tended to show, no attempt was there made to apply the ordinance to ministers functioning in a more orthodox manner."

See, also, *Thornhill* v. *State of Alabama, supra* (at pp. 97–98); *Grosjean* v. *American Press Co., supra* (at p. 251); *West Virginia* v. *Barnette, supra* (at p. 628).

We submit that Section 304 on its face exhibits elements of fatal vagueness. We do not see how it would be possible for a labor organization subject to Section 304 effectively to conduct a legislative program without living in constant fear that one or another of its activities would run afoul of the Section.

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[11] On the manner in which the precise definition of the offense cures an otherwise vulnerable statute, see *Chaplinsky* v. *State of New Hampshire*, 315 U. S. 568, 574, footnote 8.

The phrase "in connection with any federal election" has no commonly accepted meaning. Neither the dictionary nor the statute nor the legislative history provide any ascertainable standard for determining the meaning of the words. There is no guidance for a labor organization seeking to exercise its right to engage in political activity to enable it to determine at what point it becomes a criminal.

There is no period prior to the election itself which is established as the prohibited or quarantined period. The term "in connection with any federal election" obviously may mean more than endorsement of or support for a candidate who has formally filed. It may mean that activity to induce an individual to become a candidate would be condemned by the statute since this too may be "in connection with any federal election". It may even include post-election activities.

Similarly, the phrase probably embraces activities wholly unrelated to endorsing or opposing candidates. Certainly it could not be denied that even expenditures during an election in support of an issue which had become a prominent campaign issue are expenditures "in connection with" an election. We do not think it necessary further to elaborate the many conceivable types of situations in themselves not only innocent but important and desirable which may possibly fall within the vague boundaries of the law but as to which no guidance is afforded with respect to their legality.

The vagueness and indefiniteness of the term "in connection with any federal election" finds an exaggerated counterpart in the term "expenditure". When literally read it would interdict every form of conduct which would be characterized as "in connection with" a federal election. We have already referred *(supra,* pp. 20–21) to the boundless scope of the whole phrase. It is necessary to add here only that labor organizations and their officers are placed by this new criminal offense under a previous general restraint of a broad pervasive character.

The Government seeks to meet the challenge that the statute is fatally vague by inconsistently referring to two different sources to limit its meaning. We are thus told that the phrase "in connection with any election" means "for the purpose of

influencing the result of the election". This gloss is arrived at by importing into the statute a phrase from Section 307 of the Federal Corrupt Practices Act of 1925. On the other hand, although the Federal Corrupt Practices Act of 1925 contains in Section 304 a definition of the term "expenditure", the Government does not adopt that definition but refers instead to the legislative history of the new section to support its claim that this term has a narrower meaning than the same term as used in other sections of the 1925 Act.

The Government's entire attempt to give new meaning to the statute supports our contention that the statute is too vague to survive the Constitution. We submit further that its *ad hoc* gloss on the phrase "in connection with" is not justified by context or legislative history. Moreover, there is no justification for the Government's reliance upon other portions of the statute to explain the phrase "in connection with" but its refusal to go to the rest of the statute for its definition of "expenditures".[*] Finally, even if the Government's explanation of the meaning of the statute were otherwise acceptable, it would still be fatally vague.

The Government urges that its reading of the phrase "in connection with" imports into the statute what might be termed a constructive wilfulness or *scienter* which cures its claimed indefiniteness (Br., pp. 89–90).

Whatever may be thought of this contention, the fact remains that it still leaves undefined the conduct for which a labor organization may be criminally punished under the Act. Since the term "expenditure" is not made specific, the fact that the conduct must be wilful before it can be held criminal, does not give the statute definiteness. As this Court has pointed out, "wilful conduct cannot make definite that which is undefined." *Screws* v. *U. S.*, 325 U. S. 91, 101–105.

In an effort to impart to the statute some defined limitations, the Government adopts the attempts of its sponsors to improvise limitations upon the statute in legislative debate. There can be no question that limitations upon the scope of

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[*] This inconsistency can only be explained by the fact that, in an effort to save the statute, the Government has selectively emphasized the limiting aspects of its context and history and ignored those aspects which affirm its inherently vague and all-inclusive character.

the statute suggested in debate reflected a realization that a comprehensive reading could not be constitutionally supported. But the attempt in debate to impose saving limitations upon the statute, particularly upon the term "expenditures", simply substitutes one type of constitutional weakness for another.[20]

The legislative history does not save the statute; it merely emphasizes the vagueness of the statute. Thus, when asked if the publication of a union newspaper would be proscribed by the statute, Senator Taft stated that it would if it were supported "by union funds contributed by union members as dues", but not if it derived its funds from subscribers (93 *Cong. Rec.* 6436–6440). In short, whether or not an outlay constitutes a proscribed expenditure depends, in Senator Taft's view, upon the source of the outlay. Senator Taft likewise indicated that a commercial newspaper does not make an "expenditure" in connection with a federal election when the funds it expends are derived from advertising or from sales and not from the treasury of the newspaper corporation. *Id.* Similarly, an "expenditure", according to Senator Taft, is incurred by a newspaper when it publishes a special edition or a pamphlet but not when a routine edition is published. *Id.*[21]

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[20] The dilemma which confronted the sponsors in seeking to avoid unconstitutional all-inclusiveness on the one hand and an unconstitutionally vague limitation in scope on the other has been the subject of frequent comment. See, for example, *Editor & Publisher*, February 21, 1948, p. 36:.

"The First Amendment specifically protects the press from interference. Historically, that guarantee has been protected by the courts (with exceptions under the laws of libel, decency, etc.) regardless of who used the printing press. There is no justification for a statute which says, or which can be interpreted to say, that certain types of people issuing a newspaper in a cooperative way cannot speak their minds on political subjects whereas other types, or individuals, are not forbidden to do so. To prohibit all segments of the press from discussing the merits of political candidates would deprive the American people of a free press. To prohibit one segment of the press from doing so is a similar infringement."

[21] The notion that constitutional protections are lost because special arrangements are made more effectively to reach a particular audience is merely another formulation of the notion that only the ineffective presentation of ideas is protected by the Constitution (see *supra*). Liberty of the press includes liberty of circulation *(Lovell* v. *Griffin, supra)* and the Constitution does not lend itself to the facile legerdemain of sawing a right in half.

Senator Ball indicated further that expenditures derived from and "earmarked from a portion of the dues which the union collects and remits to the newspaper in the form of subscriptions" might not be an expenditure within the meaning of the statute. Senator Taft agreed, if "the newspaper is, so to speak, a going concern". *Id.* at p. 6447. But he nowhere defines what would be "so to speak, a going concern". According to Senator Ball it is not an "expenditure" for a union to print the voting record of a candidate but it becomes an expenditure when the union comments on that record. 93 *Cong. Rec.*, 6447. Senator Taft agreed with this special definition of "expenditure" thus reversing himself.

The statement by Senator Taft that an "expenditure" would include any expenditure of union funds even for a *bona fide* newspaper (93 *Cong. Rec.*, 6437–6440) was subsequently modified so as to create a distinction between expenditures on pamphlets and "*bona fide* newspapers". *New York Herald Tribune*, July 12, 1947, p. 1, col. 4.

Representative Hartley, who is responsible for Section 304, but who had not spoken in the House, flatly asserted that any union newspaper, no matter how it is supported, can legally take a stand upon a political candidate:

> "I am convinced my interpretation of the law will be backed up by the experts and if I am incorrect, I am willing to amend the Act and make it clear." *New York Herald Tribune*, July 16, 1947, p. 3, col. 2.

Senator Ball has added his voice to the general confusion as to the manner in which the term "expenditures" is to be interpreted and has stated that it was intended to apply only to "campaign diatribes" directed against a particular candidate. *New York Times*, September 7, 1947, p. 5, col. 3.

We submit that a statute, the applicability of which turns upon such factors as the source of the expenditure involved, whether from subscriptions or dues; the nature of the expenditures, whether exceptional or routine; the purpose of the expenditures, whether to launch a "diatribe" or not, is not a

statute which the Court can validate as consistent with the guarantees of civil rights."

The legislative history of the term "expenditure" asks far more questions than it answers. For example, we are completely in the dark as to whether the prohibition of the statute apply when earmarked funds voluntarily contributed are expended for a prohibited purpose by a labor organization. Does the statute require a separate fund and a separate entity, as the Government seems to contend (Govt. Br. pp. 58, 60) or is a separate fund sufficient, as the legislative history suggests (Govt. Br. pp. 44–45)?

At what point does the publication of a commercial newspaper become criminal? For example, if a newspaper is run at a loss and "corporate funds" rather than sales or advertising revenues finance its publication does it become subject to the law if it prints campaign propaganda?

And, at what point does a comment upon a candidate's voting record become so "colored" or such a "diatribe" as to bring the statute into play?

It is no answer to wave these matters aside as the Government does, by phrases such as "borderline cases". We submit that, as the above questions indicate, the statute suffers from a dual uncertainty—uncertainty with regard to persons within its scope (compare *Lanzetta* v. *New Jersey*, 306 U. S. 451) and uncertainty with respect to the standard of guilt.

We have already commented on the fact that the Government has failed to define "expenditure" in accordance with the definition contained in Section 304 of the Corrupt Practices Act of 1925. An examination of that section indicates why the Government does not urge that the term "expenditure" as there defined applies to Section 313, as amended."

Such an application would merely extend to the instant stat-

" Senator Taft has recently conceded that Section 304 "might be ambiguous" but has stated that he is opposed to altering or amending the provision before 1949. *New York Herald Tribune*, February 26, 1948, p. 1, cols. 4, 5. In short, working people are, prior to the 1948 election, to exercise their political rights under a concededly vague statute at the peril of going to jail.

" It should be pointed out that prior to the amendment of Section 313 it was assumed that the scope of Section 313 was governed by the defining section of the Federal Corrupt Practices Act. See Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 12.

ute the confusion which the language contained in that section has created in enforcing the 1925 Act. See, Clark, *op. cit.* As employed in the original 1925 Act, the term "expenditure" is defined to include "a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure" (2 U. S. C. A. Sec. 241 (e), 43 Stat. 1070). This definition is virtually identical with the definition of the term "contribution" contained in the 1925 Act. *Id.* Sec. 241 (d). The definition of "contribution" merely adds the term "subscription" and deletes the terms "payment" and "distribution".

A special committee to investigate senatorial campaign expenditures in 1946 expressly reported that these definitions of "expenditure" and "contribution" are vague and indefinite. The Report states, "failure to further prescribe within more exact limits the nature of each [namely, "contribution" and "expenditure"] has consistently caused confusion. . . ." *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.)*

Because this is a criminal statute we urge that an independent basis for invalidating it exists by virtue of its failure to provide an ascertainable standard of guilt in accordance with the requirements of the Fifth and Sixth Amendments to the Constitution of the United States. See *Connally* v. *General Construction Company*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

Reasonable men can only guess at the meaning of the statute. We submit that the terms of the law are fatally in-

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* Difficulty in enforcing the Federal Corrupt Practices Act and the Hatch Act have drawn from at least one Congressional Committee the concession that the criminal law is an inept means of policing the electoral process. See *Report of Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944* (H. Rep. No. 2093, 78th Cong., 2nd Sess.). The committee, moreover, warned (at p. 11) against the very vice which is complained of here and pointed out that in statutes in this area, as elsewhere "narrow definition and rigidity of interpretation are essential attributes of effective criminal statutes not only as a matter of legal tradition but as a matter of practical enforceability in the United States."

definite, particularly because they afford no security to the right of free-expression.

II.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES THE FREEDOM OF SPEECH AND PRESS AS WELL AS THE RIGHT TO PEACEABLY ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES OF MEMBERS OF APPELLEE CONGRESS OF INDUSTRIAL ORGANIZATIONS IN VIOLATION OF THE FIRST AMENDMENT.

The denial to the appellees of their basic constitutional rights which has been discussed above cannot be viewed in isolation and apart from the members of appellee Congress of Industrial Organizations.

The Congress of Industrial Organizations is not a disembodied abstraction. It is an unincorporated association composed of millions of members whose rights are infringed by this legislation. And in this very case the article which brought forth the indictment was prepared at the express request of appellee's members. One of the most important purposes for which the Congress of Industrial Organizations was formed is the achievement of its economic and social objectives through legislative and political action. *Constitution of the Congress of Industrial Organizations, supra.*

Unless a worker is free to join with others and contribute to a common fund for the purpose of pooling the political strength of all the members of the group, he has to that extent been denied not only the right of freedom of speech and freedom of press but the right of freedom of assembly as well. A denial to the Congress of Industrial Organizations, therefore, of political rights is in effect a denial of political rights to the millions of members of the Congress of Industrial Organizations who have formed labor organizations affiliated with the Congress of Industrial Organizations in order to

achieve political goals which as individuals would be beyond their accomplishment.

We have already pointed out that the interests, principles and ideals which motivate working men and women to organize labor unions for purposes of collective bargaining are so interwoven, so intimately entwined and so closely identified with the interests, ideals and principles that prompt them to common political action that the two sets of interests, principles and ideals are incapable of divorce or separation.

It is no exaggeration to state that the evils of inequality between the employer and the employee which gave rise to the federal policy of promoting labor organization and collective bargaining are dwarfed by corresponding evils in the political sphere today. In the 1940 Presidential and Senatorial elections more than 60 members of the duPont family contributed a total of $200,000 to various Republican committees. Over a dozen members of the Pew family contributed $164,500, and contributions from the Rockefeller family totaled over $100,000. See *S. Rep. No. 47* (77th Cong. 1st Sess.).

In 1940 one individual, Lammot duPont, contributed a total of $49,000 to 12 different state committees and two national committees; Edgar Monsanto Queeny contributed $40,375 to 8 state committees and two national committees. See *S. Rep. No. 47* (77th Cong. 1st Sess.). See also, Overacker, *"Campaign Finance in the Presidential Elections of 1940"*, 35 American Political Science Review (1941).

Nor do the records of campaign contributions and expenditures for 1944 present a significantly different picture. In the Presidential and Senatorial campaigns of that year, the following upper income families were among the heaviest contributors: duPont, Frick, Guggenheim, Harkness, Harriman, Lamont, Luce, McCormick, Mellon, Pew, Rockefeller, Sloan, Vanderbilt, and Weir. The various members of the duPont family contributed $109,832.83; the Guggenheim family contributed $28,050.00; the McCormick family contributed $28,000.00. The Mellon family contributions totaled $59,500.00; the Pew family contributions totaled $96,995.76. The contributions of the Rockefeller group totaled $52,400.00. The Sloan, Vanderbilt and Weir contributions stood at $21,250,

$38,000, and $14,842, respectively. *S. Rep. No. 101, Appendix VIII* (79th Cong. 1st Sess.)*

The denial to members of labor organizations of the right collectively to direct their political strength against the overwhelming political strength of anti-labor groups is not only to strip the workers of this country of the right to freedom of speech, freedom of the press, and freedom of assembly (see *Hague* v. *C.I.O., supra; Thomas* v. *Collins, supra; DeMille* v. *American Federation of Radio Artists, supra; Bowe* v. *Massachusetts, supra)* but to disfigure the democratic framework of our entire society and to place one group in our society in permanent political bondage.

III.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ARBITRARILY DISCRIMINATES AGAINST LABOR ORGANIZATIONS, THEIR OFFICERS AND MEMBERS IN VIOLATION OF THE FIFTH AMENDMENT.

We believe that Section 304 is on its face a palpable violation of the due process clause. A statute aimed solely at labor organizations and no other type of unincorporated association is immediately suspect and there is nothing present in the law which justifies any conclusion other than that of arbitrary discrimination.

Due process of law as it is used in the Fifth Amendment is a basic safeguard. One of the things which it has always guaranteed is that no particular person or group should be

* Many of these family groups and other large contributors not listed in the text are identified with corporations with an impressive anti-labor background. See, *TNEC Monograph No. 29*, U. S. Senate, June 14, 1946, Document 206, for a listing of the corporations dominated, controlled or influenced by the family groups listed in the text. A large number of these corporations have engaged in a variety of anti-labor activities. See National Labor Relations Board, *Table of Cases Decided, vols. I-XLI, inclusive*, Washington, 1942; *Labor Relations Cumulative Digest and Index, Part 2*, Bureau of National Affairs, Washington, 1946; *Labor Relations Cumulative Digest and Index Supplement*, Bureau of National Affairs, Washington, 1947.

arbitrarily singled out for legislative action. As this Court said of the Fifth Amendment in *Hurtado* v. *California*, 110 U. S. 516, 535:

> "But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. *It must be not a special rule for a particular person or a particular case.*" (Italics supplied.)

Thus even though the Fifth Amendment does not contain, like the Fourteenth Amendment, a clause guaranteeing equal protection of the laws, the courts have recognized not only in the *Hurtado* case, but on many occasions, that discriminatory action which is highly arbitrary and injurious would violate the Fifth Amendment. *Nichols* v. *Coolidge*, 274 U. S. 531; *Wallace* v. *Currin*, 95 F. (2d) 856, 867 (C.C.A. 4), affirmed 306 U. S. 1; *Minski* v. *United States*, 131 F. (2d) 614, 617 (C.C.A. 6); *United States* v. *Ballard*, 12 F. Supp. 321, 325–326 (W.D. Ky.); *U. S.* v. *Yount*, 267 Fed. 861, 863. See also, *Lovett* v. *United States*, 328 U. S. 303.

A law which singles out a particular group in the community for special treatment is justly subject to the condemnation of the Fifth Amendment.

As the court stated in *United States* v. *Ballard*, *supra*:

> "Nothing is more repugnant to the American mind than that . . . among fellow citizens there should be one law for one individual and a different law for another. . . . 'Due process of law' has been defined many times as meaning the law of the land, and the law of the land implies a general public law, equally binding on every member of the community. . . . Purely arbitrary orders directed against individuals or classes are not the law of the land." [*]

[*] It is significant that under state constitutional provisions guaranteeing due process of law (but, like the Fifth Amendment, without a specific "equal protection of the law" clause) the state courts have also stricken down discriminatory and special legislation. *E.g.*, *Metropolitan Trust Co.* v. *Jones*, 384 Ill. 248, 51 N. E. (2d) 256; *Sheldon* v. *Hoyne*, 261 Ill. 222, 103 N.E. 1021; *Charles J. Off & Co.* v. *Morehead*, 235 Ill. 40, 85 N.E. 264; *State* ex rel *Hamby* v. *Cummings*, 166 Tenn. 460, 63 S. W. (2d) 515.

We are aware that courts have allowed to legislatures extremely broad discretion in their classifications. See *Metropolitan Casualty Company* v. *Brownell*, 294 U. S. 580. However, we submit that there is no rational basis which justifies the imposition upon labor organizations of criminal sanctions for engaging in political activity of a type which other classes of unincorporated associations may engage in with impunity.

It should be borne in mind that what has been accomplished by Section 304 is not merely a formal discrimination against one type of entity in favor of another. What is involved here is an attempt by Congress to silence the viewpoint of an entity which speaks for labor and to permit similar entities which speak against labor to go unrestrained. We submit that there was nothing in our national experience prior to the passage of Section 304 which justifies such a judgment. On the contrary, unincorporated associations identified with a business and an anti-labor viewpoint have played a formidable role in our political and legislative processes.[*] See, for example, Blaisdell, *TNEC Report, Economic Power and Political Pressures, Monograph No. 26* (1941); Chase, *Democracy Under Pressure* (1945); Crawford, *The Pressure Boys* (1939); Pearce, *TNEC REPORT, Trade Association Survey, Monograph No. 18* (1941); Gruening, *The Public Pays* (1931); Herring, *Group Representation Before Congress* (1929); McCune, *The Farm Bloc* (1943).

Because we are dealing with civil rights and because we are concerned with the vitality of political processes as they are menaced by Section 304, we cannot treat the discrimination posed by Section 304 in a vacuum. Section 304 must be viewed as what it is—an attempt to silence one viewpoint in the market-place of ideas, to discriminate pointedly against a minority.[**]

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[*] The Trade Association Division of the Department of Commerce, upon the basis of sample surveys, estimates that approximately one-half of the trade associations in this country are unincorporated.

[**] This Court has consistently recognized that discrimination and the opportunity for discrimination renders an invasion of civil rights peculiarly vulnerable because of the handicaps it imposes upon minorities. See *supra* for a discussion on legislation which is so vague as to afford an opportunity for discrimination. On legislation which has a discriminatory purpose, see *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233.

To this discrimination has been imparted a peculiarly offensive irony in that it has been written into a law, namely, the Labor-Management Relations Act, 1947, which itself is regarded as so oppressive by labor organizations as to challenge their very existence and to create a greater need than ever for effective political action in order to secure its repeal. Congress passed a law directed at a particular group in our society and attached to that law a device permanently to shield it from the political consequences of having passed it. This result was achieved not merely by a Congressional forfeiture of civil rights but by cancelling those rights in a discriminatory fashion so that only those affected by the law, namely, labor organizations, but not other unincorporated associations would be subjected to special and extraordinary handicaps.

We submit that what Congress did was not merely unfair and unsound,—the act of discrimination is unconstitutional because it violates the root principle of our constitutional policy which is to preserve the integrity of democratic political processes so that Congress may be responsive to the will of all of the people.

The enormity of the discrimination involved in Section 304 can only be appreciated when certain basic background facts are considered. In the first place, studies show that there is little evidence that labor is or has in the past exercised a disproportionate influence on the electoral process. On the contrary, available records indicate that in recent Presidential elections labor contributed but 5 to 10 percent of all campaign funds—surely an inconsiderable amount when we consider that there are at least 15,000,000 organized workers involved. See Overacker, *Labor's Political Contribution*, 54 Political Science Quarterly 56 (1939).

In contrast—and this needs no extensive demonstration—upper income and employer-minded groups are the principal source of funds for electoral campaigns—the funds expended by these groups vastly outweighing the funds expended by unions. See *supra*, pp. 61–62.

Indeed, if labor were denied the right to oppose the political

activity of upper income groups our democratic balance would be destroyed. As one writer has pointed out:

> "The influence of great wealth in party activity is persistent and at times unchallenged; it is kept in check only by the challenge of other groups with power enough to rise from time to time and raise an effective barrier to the progress of wealth." Key, *Politics, Parties and Pressure Groups* (1942), p. 49.

It is a commonplace that the restrictions upon corporate activity contained in federal legislation dealing with elections have in no way served to diminish or halt the overriding political influence of corporate groups upon our public life. This influence has been preserved both through the activity of powerful individuals who are identified with corporations as well as through the fashioning of evasion devices.[20]

Moreover, employer-minded groups dominate the electoral scene not merely in connection with contributions but also in the area of "expenditures". These groups enjoy a decisive control of the opinion industries,[21] a control which has been increasingly used to discriminate against the participation of labor in the opinion-influencing process.[22]

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[20] See for example, Odegard and Helms, *American Politics* (1938), p. 658; Overacker, *Money in Elections* (1932), pp. 198, 325; Overacker, *Party Campaign Funds in 1932*, 27 Am. Pol. Sc. Rev. 769 (1933); *S. Rep. No. 47* (77th Cong. 1st Sess., 1941); Overacker, *Campaign Finances in the Presidential Election of 1940*, 35 Am. Pol. Sc. Rev. 701 (1941); Clark, *Federal Regulation of Election Campaign Activity*, 6 Fed. Bar J. 1, 8 (1944).

[21] See, *A Free and Responsible Press*, A Report of the Commission on Freedom of the Press (1947).

[22] See, for example, Martin, *Freedom of the Press*, 9 Political Quarterly 373 (1938); Whitney, *Labor Gets No Break in the Press* and Bliven, *Balance Sheet for American Journalism*, in Ickes, Freedom of the Press Today (1941); Sussman, *How Radio Treated Labor in the Elections*, 14 Common Sense 34 (March, 1945); Stewart, *Radio Commentators and Free Speech*, 14 Common Sense 32 (Aug., 1945); Chase, *Sound and Fury*, 128–129 (1942); Hays, *Civil Discussion Over the Air*, 213 Annals 37, 44 (1941); *Freedom in the Opinion Industries* in Lerner, Ideas are Weapons (1939); Lasswell, *Democracy Through Public Opinion* (1941).

The discriminatory practices against labor in the radio field are especially notorious. See Durr, *Freedom of Speech for Whom?* 8 Pub. Op. Q. 341 (1944) and Siepmann, *Radio's Second Chance*, (1946) 104, *et seq.* The National Association of Broadcasters' Code Manual warns (at p. 400) that "Employers are inclined to frown on those stations, especially in small communities, which open their facilities to labor unions."

Section 304 therefore can only be viewed as a statute which seeks to intensify pre-existing inequalities in our political life —inequalities which, it may be added, themselves had much to do with the passage of Section 304.[*]

The inequalities which exist and which Section 304 has intensified can only be appreciated when it is realized that the costs of reaching the electorate in a modern election are enormous. Resort to the techniques of mass communication, the increased costs of basic services, such as newspaper advertisements, meeting hall space, motion pictures, the very increase in size of the electorate, have made the process an increasingly expensive one. If workers are not permitted to pool their funds for the purpose of making their weight felt in the electoral process then our entire political processes will fall prey to small undemocratic wealthy groups which even now dominate access to those processes.

The problem of effective exercise of civil rights in the political arena can no longer be solved by easy resort to a suggestion that civil rights are free when every individual is free to hire a hall. The means for reaching and changing the minds of men are, in today's world, complex, involved and—most important of all—expensive.[*]

A trade union member must enjoy the protection of collective political activity through his labor organization in order to oppose the political aggression of those whom he is powerless to oppose individually. Surely, he needs the protection of group political activity at least to the same extent as a business man who is a member of an unincorporated trade association, a farmer who is a member of an unincorporated agricultural association, a veteran who is a member of an unincorporated veterans' association, a professional who is a member of an unincorporated professional organization. By placing the farmer, the veteran, the business man and the professional in a special position, Congress has struck at the very root of our constitutional protections.

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[*] See, for example, 93 *Cong. Rec.*, April 16, 1947, p. 3600.

[*] See Cherrington, *Our Freedoms and Our Opinions*, 6 Pub. Op. Q. 616 (1942).

IV.

THAT PORTION OF SECTION 313 OF THE FEDERAL CORRUPT PRACTICES ACT, AS AMENDED BY SECTION 304 OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, WHICH PROHIBITS EXPENDITURES BY A LABOR ORGANIZATION IN CONNECTION WITH A FEDERAL ELECTION ABRIDGES RIGHTS RESERVED TO THE PEOPLE BY THE NINTH AND TENTH AMENDMENTS.

As we have pointed out above, political activity is one of the fundamental rights guaranteed to the people by the Constitution. It is not merely the means for engaging in that activity which falls within other specific guarantees of the Bill of Rights which are protected. Rather, political activity itself, the right to organize a political movement and to use in that organization the rights of freedom of association, of the press, of assembly and of speech, is a basic right of the American people. It is this right which defines the character of our government and the rights of freedom of speech, the press, etc., are merely guarantees that this right to engage in political activity shall not be destroyed by arbitrary official action.

These basic residual rights are embodied in the Ninth and Tenth Amendments which are, equally with the First Amendment, a part of the Bill of Rights. These Amendments state specifically: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." (Amendment IX) and reserve "to the people" the powers not delegated to the Federal Government (Amendment X).

While the Tenth Amendment has frequently been relied on in attempts to defeat the exercise of federal regulation on the ground that no power has been granted to the federal government by the Constitution to encompass the regulation in question and that the rights of the states have been infringed, the present case involves not the rights of the states as against the exercise of federal power but rights reserved to the people which are equally protected by the Constitution against both state and federal action. This Court has recognized in *United Public Workers* v. *Mitchell*, 330 U. S. 75, that the right to

engage in political activity is a basic right protected by the Ninth and Tenth Amendments. The Court there stated (at p. 94):

> "We accept appellants' contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments are involved."

In *State* v. *Pierce*, 163 Wis. 615, 158 N. W. 696, the Supreme Court of Wisconsin made it clear that the corrupt practices concept could not serve as a justification for destroying the basic political rights of the people. In that case the court held invalid a provision of the Wisconsin Corrupt Practices Act outlawing disbursements for political purposes by persons or a group of persons residing outside the county where such expenditures are incurred.

The court thus affirmed the political rights of the people (158 N. W. at 698):

> ". . . Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens of other counties without committing a crime. Under such laws no great propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, and the reformer whose eye kindles with the dawning light of a better day must be content to confine his personal activities to the inhabitants of his own small bailiwick. Almost every forward step in political and governmental affairs comes as the result of long agitation and discussion in the press, on the rostrum, and in the open forum of personal contact. This agitation and discussion often goes on for years before the idea is formally indorsed by any party. Yet it will generally be the case that during this period there will be individual candidates in one party or the other, or both, who favor the new thought. Now this law means that in such a situation no man, or group of men, can do a stroke of political work involving expense in any other county than their own, however legitimate and praiseworthy be the means which are used. No political committee will take up the work, for the very good reason that the party organization has not indorsed the doctrine.

> "There are times also when devoted citizens firmly believe that no organized political party stands for the right or deserves support, and that an independent candidacy is necessary. Can it be that under such circumstances these citizens can be wholly deprived of the right to go to any part of the state at their own expense, collect information on the subject, and endeavor by word of mouth or by the distribution of printed matter to put the issue as they see it before such fellow voters who are not residents of their own county? We are very clearly of opinion that this question must be answered in the negative."

It is our contention that the federal government in this case is devoid of power to deprive appellees of the right of political expression. The asserted basis of that power is contained in Article I, Sections 2 and 4, of the Constitution. Article I, Section 2, of the Constitution, commands that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature". By Section 4 of the same Article "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators".

This Court has justified in a series of cases exertion of power under these sections of Article I. The most recent of such cases is *United States* v. *Classic*, 313 U. S. 299. That case and a line of cases which antecede it are unified by a common affirmation of federal power to preserve the purity of the electoral process. Every exertion of power validated in those cases is justified on the ground that Congress has the right to preserve the purity of the electoral process by banning fraud and violence and the sources of fraud and violence; by insisting upon full disclosure; by insisting upon statements of campaign expenditures; by punishing election officials for neglect of duty.

However, in no case has the power of the government been sustained to do what Congress has sought to do in Section 304.

For we are here dealing with an attempt to sterilize rights in the political arena not to insure their free expression; to impose a blackout upon the electoral process not to bring light to it.

No one may quarrel with the contention that the federal government enjoys certain powers to supervise the conduct of federal elections, but it may not under the guise of supervision destroy the inviolate rights of the people to engage in political activity. The constitutional authority of Congress must be exercised in such a way as to leave intact the rights preserved to the people under Amendments IX and X. And in the exercise of its power to insure free and honest elections, the government may not deny to a free people the means for insuring that elections will be representative. To suggest otherwise is to sanction a form of constitutional cannibalism under which a power designed to preserve a right is used to devour it.

CONCLUSION

In recent years political movements of the people have found expression in a great variety of technically non-political forms.[*]

Political activity is no longer a narrow province occupied exclusively by professional politicians. The conventional apparatus through which, historically, the political process has been organized and forwarded is being increasingly supplemented by organizations of ordinary citizens who seek some effective means of participating in political life.

This intensification of political activity among our people vitalizes our democracy because it promotes more widespread suffrage, because it supplies an important means of educating an electorate too vast to be reached by our conventional political organs, and because it insures that political policies and platforms will reflect the needs of the people, that the outcome of elections will reflect their will, and that the efforts of those elected will serve the public interest.

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[*] The implications of this development in relationship to aspects of the Federal Corrupt Practices Act not involved here are discussed in *Report of the Special Committee to Investigate Campaign Expenditures for the House of Representatives, 1944* (H. Rep. No. 2093, 78th Cong. 2nd Sess., p. 7).

Labor organizations are a part of this wholesome broadening of the base of our political life. The process through which it is being achieved is a process which, the Bill of Rights commands, is to be forever unimpaired. Because Section 304 bars appellees' access to that process it is unconstitutional.

We respectfully submit that that portion of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, which prohibits expenditures by a labor organization in connection with a federal election is, for the reasons set forth above, unconstitutional, and that the judgment of the court below should therefore be sustained.

Respectfully submitted,

CHARLES J. MARGIOTTI
LEE PRESSMAN
FRANK DONNER
Attorneys for Appellees

APPENDIX I

TEST OF POLITICAL FREEDOM

By PHILIP MURRAY

President, Congress of Industrial Organizations

On Tuesday, July 15, a special Congressional election will be conducted in one of the Districts of the City of Baltimore.

One of the candidates, Judge Ed Garmatz, has been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland. The candidate for the opposition party is notorious among the working men and women of Baltimore for his anti-union views and activities.

The CIO has been requested by representatives of its members within the Congressional District involved in this election to give publicity to the action of the State PAC and to urge that members of CIO unions in the District cast their votes for Judge Garmatz.

The Congress of the United States, however, has recently enacted a law, commonly known and referred to as the Taft-Hartley Act. This law purports to make it illegal for American working men and women organized into labor organizations and acting through their duly elected officers to expend their common funds to make their views heard and known in matters relating to elections for federal office.

Senator Taft, the foremost sponsor of the new law, has publicly stated his view that it is the purpose, intent and effect of the new law to stifle the voice of labor in political matters and particularly to prevent labor from supplying in its own publications, distributed among its own members, facts and information with respect to current election issues and candidates.

I have been reared in a tradition of respect for the law of the land. In my public and private life I have adhered religiously to the principles of that training. Consistent with those principles I deem it the duty of citizenship to abide by and respect the highest law of the land—the Constitution of the United States.

It has always been my understanding that that document guarantees the basic American rights of free speech, free press,

free assemblage and forbids the denial of life, liberty or property without due process of law. Those guarantees and those protections, I am advised and firmly believe, are and must be available to all without distinction, caste or class.

I am advised and firmly believe that they are rights and protections to which the working men and women of this country, the members of labor unions, the members of CIO unions, are fully entitled.

If the Taft-Hartley Act means what it has been proclaimed to mean, it flagrantly flaunts fundamental principles which have been cornerstones of American tradition and American freedom ever since the founding of our great nation.

I believe that I would be remiss in the performance of my duties as an American citizen if I did not speak and act firmly in support of those great traditions and those vital freedoms which have made America what it is today.

Under the procedures of our courts it is possible to strike down unconstitutional laws only by taking affirmative action in reliance on and in the exercise of the liberties guaranteed by the Constitution.

This I have decided to do.

I have made this decision not in a spirit of defiance or bravado or bitterness. Rather do I act in a spirit of regret that the Congress of the United States should have chosen to curb basic liberties, and in a spirit of hope and trust that the courts of the United States will vindicate those liberties.

I therefore have directed and requested the editor of the CIO NEWS to publish this statement, including the following paragraphs, and to give to this issue of the CIO NEWS proper circulation among the members of CIO unions in the City of Baltimore and, particularly, within the Congressional District in which this election is scheduled to take place.

The Taft-Hartley Act has imposed upon American workers and their unions untold ills and hardships which threaten their living and working standards and the very existence of their organizations. The evils of this law have become well known to members of our unions throughout the length and breadth of our land. It is vital for the preservation of the living standards of America that this law be repealed.

It is apparently the judgment of CIO members and leaders in the City of Baltimore that Judge Garmatz is a candidate whose record, experience and understanding are such that he may be expected to appreciate the evils of this law and to act in the public interest for its repeal. The CIO NEWS belongs to the members of CIO and serves as the organ of expression for the principles and views democratically adopted by its members and affiliates.

In performance of my duty as President of CIO, I therefore open the pages of this publication to an expression of views of the CIO members in Baltimore.

In accordance with their decision and request I take opportunity to urge that all members of CIO residing and voting in the Congressional District in which this election is scheduled to take place cast their votes for Judge Garmatz, and make every effort to bring their neighbors and friends and to all persons eligible to vote in this election a full understanding of the issues involved and of the importance of voting for Judge Garmatz.

I firmly believe that the action which I now take is fully legal under the law of our land. It is my understanding that the issue as to whether proper respect will be paid to the fundamental guarantees and principles of our Constitution must now rest in the hands of the law enforcement agencies of the Federal Government.

APPENDIX II

PROVISIONS IN THE CONSTITUTIONS OF AMERICAN LABOR ORGANIZATIONS RESPECTING POLITICAL AND LEGISLATIVE PURPOSES AND FUNCTIONS.

Selections From Existing Constitutions of National and International Unions Affiliated With the Congress of Industrial Organizations Respecting Political and Legislative Purposes and Functions.

Automobile, Aircraft and Agricultural Implement Workers of America, International Union, United

Article 2, Section 4:

"To educate our membership in the history of the Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor. To enforce existing laws; to work for the repeal of those which are unjust to Labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance, the expense of which to be borne by the employer and the Government."

Article 31, Section 3:

"The purpose of the District Council shall be to recommend to the Regional Director and the International Union, constructive measures for the welfare of Local Unions and their members. It shall discuss comparative wages, rates, agreements, methods of approach, organizational problems, National and State legislative programs and such other problems as may be of general interest to the Local Union membership."

Article 42, Section 1:

"The Local Union shall have the following standing Committees: Executive Board, Constitution and By-Laws, Union Label, Education, Relief, Legislative and Political Act, and such other . . ."

Barbers' and Beauty Culturists' Union of America

Article XIII, Section No. 1:

"A State Organization may be chartered where three or more local unions are desirous of forming such a State Organization, for the purpose of promoting a legislative program beneficial to the hairdressing and barbering professions."

Brewery, Flour, Cereal, and Soft Drink Workers of America, International Union of United

Article II, Section 4:

"Active participation in the political labor movement of the country, on independent labor class lines."

Clothing Workers of America, Amalgamated

Article III:

"(c) To defend and extend democratic institutions and procedures and the civil rights and liberties of its members and all others.

(g) . . . to affiliate with or lend assistance to associations of labor organizations and political organizations; . . . and to use all other appropriate means for the accomplishment of the foregoing objects."

Communications Association, American

Article II (Objects), Section 1:

"(e) To advance the economic, political, social and cultural interests of the workers in the industry;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(h) To participate jointly with progressive labor, political, fraternal, cultural and social organizations in activities intended to advance the economic, political and social interests of all workers;

(i) To protect and extend our democratic institutions and the civil rights and liberties of all workers;"

Article II, Section 12.

"The duties and functions of a District Council shall be: (c) To plan and participate in such joint economic, political, social and cultural activities as will benefit and protect the interests of the members of affiliated local unions;"

Electrical, Radio and Machine Workers of America, United

Preamble:

"We pledge ourselves to labor unitedly for the principles herein set forth, to perpetuate our union and work concertedly with other labor organizations to bring about a higher standard of living of the workers."

Farm Equipment and Metal Workers of America, United

Article 5 (Objects), Section 1:

"(e) To advance the economic, political, social and cultural interests of the workers covered by our jurisdiction;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Article 29, Section 7

"Legislative Director. It shall be the duty of this officer to keep abreast of pending legislation in the municipal, county, state and national legislative bodies, and he shall, in cooperation with the Local Union Executive Board, through all feasible means available, endeavor to acquaint the membership with the contents of such pending legislation and shall undertake measures to insure the support and adoption of legislation advantageous to the labor movement and the defeat of legislation which may be detrimental to the best interests of the membership and workers at large."

Fur and Leather Workers Union, International

Article II (Objects):

"C. Secure legislation safeguarding the economic security and social welfare of the workers in the fur and leather industries, to protect and extend our democratic institutions and civil rights and liberties.

E. . . . to promote and assist independent political expression and action of organized labor in cooperation with all workers and working farmers throughout the United States and Canada."

Furniture Workers of America, United

Article II, (Objects) Section 1:

"e) To advance the economic, political, social and cultural interests of the workers in the industry.

f) To aid in the adoption of laws for the economic and social welfare of all workers.

g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Food, Tobacco, Agricultural and Allied Workers Union of America

Article II (Purposes and Objects):

"Section 5. To secure equitable statutory old age pensions, workmen's compensation, extension of unemployment compensation to all workers, and to work for the extension of social and labor legislation, to cover all workers, regardless of industry.

"Section 6. To secure enactment of laws protecting the limbs, lives and health of workers, establishing our right to

organize, prohibiting the use of strikebreakers, preventing the employment of armed guards during labor disputes, and such other legislation as will be beneficial to the workers; to strive for the enforcement of just laws and the repeal of those which are discriminating against the workers of our calling."

Gas, Coke and Chemical Workers of America, United

Article II (Objects):

"Third. To secure legislation safeguarding and promoting the economic security and social welfare of the workers in the industry, to protect and extend our democratic institutions and civil rights and liberties and thus to perpetuate and advance the cherished traditions of our democracy. . . ."

Glass, Ceramic and Silica Sand Workers of America, Federation of

Article II (Objects):

"Section 2—To assist each other to secure employment, to reduce the hours of daily labor, to secure adequate and increased pay for our work by legislation, conciliation, wage agreements, or strikes, and to promote the interest and welfare of its members and their dependents.

"Section 3—To labor for the enactment of legislation that will protect the life and limb of the workers, conserve their health, improve social conditions, and to promote the general well-being of the workers."

Longshoremen's and Warehousemen's Union, International

Article III, Fourth:

"to secure legislation in the interest of labor and to oppose anti-labor legislation."

Marine and Shipbuilding Workers of America, Industrial Union of

Preamble:

". . . The Industrial Union of Marine and Shipbuilding Workers of America further believes in a fraternal front with the membership of all other working class organizations which conduct activities for the furtherance of the economic, political, and educational interests of the working class."

Marine Cooks and Stewards, National Union of

Preamble:

"The Marine Cooks' and Stewards' Union is organized for the purpose of improving the working and living conditions of its members and their families, and to unite them in the struggle to attain the economic, social and political welfare of the communities in which they work and live, and of all peoples."

"The Marine Cooks' and Stewards' Union declares that its purpose in formulating this Constitution is:

5. To participate fully in the common struggle of all trade unions, . . .

(a) against encroachment on the economic and social rights of the workers and upon the democratic rights of the people;

(b) for the satisfaction of the need of workers for security of employment;

(c) for the progressive improvement of wages, hours, and working and living conditions of the workers;

(d) for the full and adequate social security to protect the people and their families against the hazards of unemployment, sickness, accident and old age;

(e) for the adoption of all measures that will further the social and economic well being of the people;

(f) against the passage of any legislation intended to weaken, disrupt or destroy the trade-union movement and its progressive activities.

6. . . . In order to achieve these ends, our Union bases its work upon the following principles:

3. Coordination of economic and political action with other trade unions for the realization of our aims and decisions."

Marine Engineers' Beneficial Association of the United States of America, National

Article III, Section 3. The duties of the National Executive Committee . . .

"They shall be informed by correspondence through the office of the National Secretary of all proposed changes in the laws and rules relative to the Bureau of Navigation and Steamboat Inspection Service or contemplated changes in laws and rules governing employment of Marine Engineers or other licensed officers."

General Laws:

Article V, Section 1, "The appointed committees . . . shall be as follows: . . .

On Legislation, to whom shall be referred all resolutions regarding proposed legislation."

Maritime Union of America, National

Article I, (Objectives) Section 3:

"(c) To increase the wages and improve the conditions of employment of our members by political action, legislation, conciliation joint agreements or strikes.

(e) To secure equitable statutory old age pensions, unemployment insurance and accident insurance.

(f) To insure by legislative enactment laws protecting the limbs, lives and health of our members, especially our right to organize and to strike, prohibiting the use of deception to secure strikebreakers, preventing the employment of privately armed guards during labor disputes, and such other legislation as will be beneficial to the members of our organization.

(j) To secure the enactment of a manning scale for all classes of vessels based on gross tonnage; adequate working conditions and working hours through legislation or economic action.

(m) To establish a legislative committee in Washington, whose object shall be among others to have passed laws beneficial to the interests of maritime workers and enabling them to exercise their franchise, to vote either directly or by absentee ballot.

Mine, Mill and Smelter Workers, International Union of

Preamble:

Article I, Section 2:

"The objects of this organization shall be to unite the various persons working under our jurisdiction into one central body, to practice those virtues that adorn society and remind man of his duty to his fellow man, to elevate his position and to maintain the right of the workers to increase the wages and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes."

"5. We hold that an industrial union and the concerted political action of all wage workers is the only method of attaining this end."

Office and Professional Workers of America, United

Article I, Section 3. . . . to protect, maintain and advance the economic and social itnerests of its members; to aid and promote labor and social legislation, to foster friendly relations with all other organizations whose aims are consistent with the objects of this National Union."

Public Workers of America, United

Article II, Section 2:

"Legislation, negotiation and education shall be the basic principles employed in achieving these ends. . . ."

Packinghouse Workers of America, United

Article II:

"C. To secure legislation and support policies that will safeguard and improve our economic security and social welfare. To protect and extend our democratic institutions, civil rights

and liberties and thus to perpetuate the cherished traditions of our democracy."

Paperworkers of America, United

Preamble:

"The development of modern industry has made the labor union a necessity for workers. In our complex and highly organized society, workers are powerless unless they are united along industrial lines. Through the union, workers can achieve both voice and strength in the affairs of industry and the nation. By industrial and political action, workers can attain their just and equitable place in society."

Article II:

"2. To increase the wages and improve the conditions of employment of our members through collective bargaining, political action, trade-union cooperation and all other legitimate means.

3. To endeavor to secure through negotiations and legislation shorter hours of work by day and week.

5. To provide for the education of our children by lawfully prohibiting employment under eighteen years of age, and further, by providing adequate public educational facilities of high standards.

6. To secure equitable statutory old age pensions, workmen's compensation and unemployment insurance laws.

7. To enforce existing laws beneficial to the commonweal and repeal those which are discriminatory and unjust.

8. To secure by legislative enactment, laws protecting the lives, limbs, and health of workers; guaranteeing the right of workers to organize without fear; prohibiting the use of strikebreakers; prevent the use of force and intimidation against workers during labor disputes; and such other legislation as will be beneficial."

Playthings, Jewelry and Novelty Workers International Union

Article III:

"I. To secure equitable statutory old age pensions, unemployment insurance and accident insurance.

J. To secure by legislation enactment, laws protecting the limb, lives and health of our members, especially our right to organize and to strike, prohibiting the use of deception to secure strikebreakers, preventing the employment of privately armed guards during labor disputes and such other legislation as will be beneficial to our members."

Retail, Wholesale and Department Store Employees of America, United

Declaration of objectives and principles

"The United Retail, Wholesale and Department Store Employees of America will strive to preserve and extend the democratic processes of our country, protect civil liberties and aid in the adoption of legislation which will promote the economic and social welfare of its members and that of labor in general. Through unity of purpose and action, through collective bargaining and legislation, the [Union] is dedicated to the ideal of making the jobs of its members the best jobs that can be devised from the point of view of wages, hours of work, physical conditions and human relations."

Rubber Workers of America, United

Preamble:

"Labor acting along economic and political lines can secure a more equitable distribution of the nations' wealth to all those performing useful service to society."

Article II, Section 1:

"(g) To cooperate with other labor organizations to secure just recognition of the rights of labor in national, state, county and municipal government; to support legislation tending to bring government closer to the people and to bring the people at large closer to government for the benefit of the mass of the people, of whom the overwhelming majority are workers."

Shoe Workers of America, United

Article II, Section 2:

"(a) To work for the establishment of adequate Child Labod Laws; Workmen's Compensation; Old Age Pensions; Social Security and other social legislation which will benefit the workers.

(c) To enforce existing just laws and to secure the repeal of those which are unjust.

(d) To secure enactment by legislation of laws which will protect the lives, the health, vision and limbs of our members; prohibit the use of strikebreakers and prevent the use of privately armed guards and spies against the workers."

Steelworkers of America, United

Article II—Objects:

"Third. To secure legislation safeguarding the economic security and social welfare of the workers in the industry, to pro-

tect and extend our democratic institutions and civil rights and liberties and thus to perpetuate the cherished traditions of our democracy."

Stone and Allied Products Workers of America, United

Preamble

"And believing in organization based on sound principles as to the wisest use of our citizenship, based upon the class struggle, upon both economic and political lines, with a view to restore the common weal of our government to the people, and using the natural resources and means of production and distribution for the benefit of all the people:"

Textile Workers Union of America

Article II:

"Section 1. (c) To defend and extend their [textile workers] civil right and liberties.

"Section 2. The International Union shall accomplish the foregoing purposes by organizing the unorganized workers in the textile industry, educating its membership, negotiating collective bargaining agreements with employers, securing legislation, and by all other appropriate means."

Transport Service Employees of America, International Union, United

Article II:

"Objects. . . . To educate our membership in the history of the American Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and to work for the passage of improved legislation in the interest of all labor, both State and National; to enforce existing laws, to work for the repeal of those which are unjust to labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance at the expense of the employer and the government."

Transport Workers Union of America

Article II—Objects:

"(e) To advance the economic, political, social and cultural interests of the workers in the industry;

(f) To aid in the adoption of laws for the economic and social welfare of all workers;

(g) To protect and extend our democratic institutions and the civil rights and liberties of all workers."

Utility Workers Union of America

Preamble:

"We, the Utility Workers of America, believing . . . that Labor acting along economic and political lines can secure a more equitable distribution of the nations' wealth for all those performing useful service to society;"

Article II—Objects:

"Section 3. To secure legislation safeguarding the economic security and social welfare of the workers in the industry, to protect and extend our democratic institutions and civil rights and liberties and thus to perpetuate the cherished traditions of our democracy."

Woodworkers of America, International

Article I, Section 6:

"It shall be the responsibility of the membership herein, through its Union, to maintain an alert and considerate watch over its economic and political interests in all their multifold aspects. Therefore, the Officers and members of this Union are charged with the responsibility of advancing by every honorable means the economic welfare of the workers through securing increases in wage levels, reduction in their hours of toil and the improvement of their working conditions. In addition, recognizing the common interest of all working people in advancing their level through political means, it shall be the duty of all the Officers and members of this Union to secure by joint action with other progressive bodies, legislation, working men's compensation, old age pensions, the elimination of child labor, protection and extension of civil rights and liberties of the people of this country, and further to safeguard and advance the rights of labor to organize, strike and bargain collectively."

Selections From Existing Constitutions of National and International Unions Affiliated With the American Federation of Labor Respecting Political and Legislative Purposes and Functions.

Airline Dispatchers Association

Article I, Section 5:

"To sponsor and support legislation and regulations affecting air line dispatchers and the industry as a whole, which may improve working conditions."

Air Lines Pilots Association

Article I, Section 6:

"To urge, support, and sponsor the passage of legislation and regulations affecting air line pilots which will improve, protect, and increase the safety of their working conditions."

Automobile Workers of America, International Union United

Article II:

"To educate our membership in the history of the American Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the passage of improved legislation in the interest of all labor; to work for the repeal of those laws which are unjust to labor; to work for legislation having as its object the establishment of real social and unemployment insurance, the expense of which is to be borne by the employer and the Government."

Barbers, Hairdressers and Cosmetologists' International Union of America, The Journeymen

Article XVIII, Section I:

"If one or more members of a local union, or a local union, shall be found guilty of individually or collectively preventing the passage or enforcement of legislation relative to the barbers or beauty license or Sunday closing laws, or any other legislation endorsed by the International, or shall either individually or collectively, in a personal, professional, or political capacity, or in any other way, aid, counsel or advise, either directly or indirectly, in any cause, movement or thing that may, will, or has prevented, weakened or delayed the passage or enforcement of such legislation shall each be fined a sum not less than $25.00 nor more than $500.00.

Bill Posters and Billers of America, International Alliance of

Preamble:

"While we are opposed to entering any political party as a body, we declare it to be our duty to use our strength and influence with the law-making powers to secure the enactment of laws beneficial to our interests and those of the wage-earner in general."

Carmen of America, Brotherhood Railway

Preamble:

"To cooperate with all trade, labor and farmer organizations to secure the passage of such laws as are beneficial to the working class."

Constitution:

"Said Boards shall be organized for the purpose of protecting the interests of members along legislative lines in the several states, territories and provinces of the United States, Canada, Newfoundland, and Mexico, and shall publish report of action and legislation that has been attempted or completed, regularly in the *Carmen's Journal.*"

Carpenters and Joiners of America, United Brotherhood of

"Resolved, that it is of the greatest importance that members should vote intelligently, hence the members of this Brotherhood shall strive to secure legislation in favor of those who produce the wealth of the country, and all discussions and resolutions in that direction shall be in order at any regular meeting, but party politics must be excluded."

Cement, Lime and Gypsum Workers International Union, United

Article III, Section 3:

"To secure equitable old-age pensions, workmen's unemployment insurance and health insurance, and to amend and improve legislation in the present workmen's compensation laws, and to amend and enact such other legislation as will be beneficial to our members and other labor organizations."

Chemical Workers Union International

Article II, Section 1:

"To foster and support legislation in the interests of the working class."

Clerks, National Federation of Post Office

Article VII, Section 2:

"The Legislative Representative shall have charge of and, under the supervision of the President, shall direct all activities of the Federation in regard to legislation of interest to members of and perform such other duties as this Federation may require of him."

Clerks, Brotherhood of Railway

Article XXIII, Section:

"The Grand President in consultation with the Grand Executive Council, in absence of Convention action, shall determine the policy of the Brotherhood in respect to Federal Legislation."

Section 7:

"The State or Provincial Legislative Board shall elect a State or Provincial Legislative Chairman. The Legislative Chairman, when authorized by the Legislative Board . . . shall peruse all bills, memorials and resolutions introduced in the legislature and oppose all legislation detrimental to the welfare of the Brotherhood; he shall have introduced and support such bills and resolutions as advances the welfare of the members of the Brotherhood, subject to the policy of the Brotherhood . . ."

Section 9:

"When such policy has been declared, no member of the Brotherhood shall appear before any legislative committee, Legislature, State, Provincial or Federal executive in opposition to such a program or policy in any capacity except that of a private citizen."

Clerks' International Association, Retail

Section 3 (e):

"While we are opposed to entering any political party as a body, we declare it to be our duty to use our influence with the law making power to secure the enactment of laws beneficial to our own interests, and those of the wage workers in general."

Coopers' International Union of North America

Preamble:

"To prevent undue influence on the part of combinations of capital over legislative bodies by which laws detrimental to labor are secure, and, as far as possible, to obtain through such legislative bodies the enactment of such equitable laws as will be of benefit to the working class."

"To oppose in every way undue assumption of power on the part of the judiciary, arbitrarily governing labor organizations by means of court injunctions."

Engineers, International Union of Operating

Article II, Section 4:

"To watch over all legislative measures of actions by public authority which may effect or tend to effect the interests of the membership; to use its influence to secure the promotion, rejection, or amendment of legislation as the exigencies of the occasion may demand."

Government Employees, American Federation of

Article II, Section 2:

"The Federation shall strive to promote efficiency in the governmental service, and shall advance plans of improvement to be secured by legislative enactment through cooperation with governmental officials and by other lawful means."

Handbag, Luggage, Belt and Novelty Workers' Union, International

Article I, Section 3:

"The object of this International Union shall be to unite in one organization all workers, men and women, eligible for membership; to promote the material and intellectual welfare of its members; to secure and preserve for them higher wages, shorter hours and other improvements to the conditions of labor; to aid and promote labor and social legislation and to assist any movement for the advancement of such legislation . . ."

Hatters, Cap and Millinery Workers International Union, United

Article I, Section 3:

". . . to aid and promote labor and social legislation and to assist any movement for the advancement of such legislation."

Hotel and Restaurant Employees and Bartenders International Union

Section 88:

"He (the General President) shall be empowered to appoint a special legislative representative to State Legislature and Provincial Parliaments when, in his judgment, the interest of our craft people may be served."

Longshoremen's Association, International

Article IV:

". . . to secure and promote laws for the benefit of its members and labor generally."

Maintenance of Way Employees, Brotherhood of

Article V, Section 11 (a):

"He (the President) shall also have the power to appoint legislative representative, when necessary, to look after the interests of the Brotherhood, when approved by the Executive Board."

State Legislative Department:

Article I, Section 1:

"For the purpose of protecting the interests of its members along legislative lines, in the several states, territories and the District of Columbia of the United States, the Brotherhood of Maintenance of Way Employes shall maintain a department to be known as the Legislative Department of the Brotherhood of Maintenance Workers . . ."

Musicians, American Federation of

Article XIX, Standing Resolutions:

28. "The Federation endorses the political policy of the American Federation of Labor, to Wit: 'Stand faithfully by your friends and elect them. Oppose your enemies and defeat them'."

34. "Locals are urged to support, wherever possible, any legislation which will tend to establish old-age pensions in the various states and the abolition of poor houses."

37. "The Federation endorses and supports the President's National Committee for legislation leading to permanent fair employment practices."

44. "The American Federation of Musician's Convention assembled hereby endorses and urges support of all social security legislation endorsed by the American Federation of Labor."

Post Office and Railway Mail Handlers, National Association of

Article II, Section 2:

"The association shall strive to advance the interests of its members through cooperation and legislation."

Seafarers International Union of North America

Article IV, Section 1:

"To act on the affiliated Unions' behalf in connection with any bills pending before any Federal or State legislative body."

State, County and Municipal Employees, American Federation of

Article II, Section (h):

"To promote civil service legislation and career service in government."

Section 2 (c):

"Promotion of required desirable legislation."

Signalmen, Brotherhood of Railroad

Article I, Section 74:

"The Council shall give due consideration to all questions of national and international character which affect the wages and working conditions of the membership."

Telegraphers, The Order of Railroad

Article VI, Section 8:

"It shall be the duty of the Committee on State and National Legislation to recommend legislative movements and the passage of laws for the amelioration of the condition of the wage earner."

Textile Workers of America, United

Objects:

6. "To use all our efforts to secure, by all fair and honorable means, human labor legislation for textile workers . . ."

Tobacco Workers, International Union

Preamble:

". . . to teach the use of rights of citizenship intelligently and the wisdom of acting in unison along social, economic and political lines for the perpetuation of the Union, and the preservation of our democratic form of government in the interest of a higher standard of living among the toiling masses . . ."

Typographical Union, International

Resolutions, Section 3:

18. "That the 88th Convention of the International Typographical Union urges members of the Congress and the Senate of the Government of the United States to amend the Social Security Act."

19. "That the International Typographical Union goes on record as favoring amendments to the Federal Social Security Act which would provide old age and survivor's benefits for employes of religious, educational and charitable institutions; that the officers of the I.T.U. seek the cooperation of all labor organizations in support of such amendments."

20. "That the International Typographical Union delegates to the American Federation of Labor and the Canadian Trades and Labor Congress be instructed to urge those bodies to seek enactment of legislation by the various states and provinces compelling employers whose employes are engaged in a labor dispute to insert such information in any advertisements for new employes."

Upholsterers' International Union of North America

Article XII, Section 3:

"The International Union may become affiliated with any department, bureau or committee of the American Federation of Labor or friendly economic, political or legal organizations not antagonistic or hostile to the American Federation of Labor or this International at the discretion of the General Executive Board."

Wall Paper Craftsmen and Workers of North America, United

Article II, Objects:

". . . to foster and promote labor and social legislation and to assist in movements for the advancement of such legislation . . ."

Yardmasters of America, United

By-Laws, Section 11:

"The President shall represent the Organization for the purpose of taking care of the best interest of the Organization and its membership before the tribunals created by the Acts of Congress . . ."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA, *Appellant*,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, Officer Thereof.

On Appeal From the United States District Court
For the District of Columbia

BRIEF ON BEHALF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

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BRIEF ON BEHALF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

INTEREST IN PROCEEDINGS

The American Federation of Labor has requested and has been granted permission to file a brief in this matter as amicus curiæ. Its great interest in this case arises out of the fact (1) that it, like the respondent organization herein, issues various publications and distributes them to its membership and to the public generally; (2) that most of the 104 National and International Unions affiliated with it issue and distribute similar publications; and (3) that it has been the practice in the past, and it is hoped and expected to be the practice in the future, to utilize such publications to inform the membership and the public

of the qualifications or lack of qualifications of political candidates for federal office. Such publication is and has been in the tradition first formulated by Samuel Gompers of electing labor's friends and defeating labor's enemies. Under Section 304 of the Labor-Management Relations Act, 1947, Congress has attempted to proscribe the use of labor publications for such purpose.

The American Federation of Labor is further interested in the present proceedings for the reason that those of its affiliates which are unable, for financial or other reasons, to issue their own publications have customarily resorted to dissemination of their views concerning the qualifications of federal political candidates through the purchase of advertising space and radio time in commercial newspapers and radio stations, and one of such local affiliates, namely, Painters' Local Union No. 481, of Hartford, Conn., has been indicted by a federal grand jury under Section 304 for so doing.[1]

QUESTIONS TO BE DISCUSSED

It would, for the most part, be duplicitous to present further argument or citation of cases in support of the main constitutional points raised and discussed by respondents in their brief. Accordingly, this brief will be confined to a refutation of the two principal arguments advanced by the Government in support of the restrictions on political expenditures contained in Section 304 of the Labor-Management Relations Act of 1947. These arguments, in substance, are as follows: Whatever infringements on civil liberties exist under Section 304 are justified (1) under the power of Congress to keep pure the electoral processes, and (2) on the theory that Congress is seeking

[1] This case is *United States v. Painters Local Union No. 481 and John R. O'Brien*, in the District Court of the United States for the District of Connecticut. The defendants have filed a motion to dismiss the indictment on the grounds of the unconstitutionality of Section 304, which motion has been taken under advisement by the court after hearing arguments on March 19, 1948.

merely to protect the rights and interests of minority groups within labor organizations who might dissent from the political views of the majority and oppose expenditure of organization funds to disseminate such views.

A brief preliminary discussion concerning the close integration of political and economic activities in the ordinary functioning of labor organizations is relevant to a discussion of both of these foregoing arguments and is further indispensable to a proper realization of the impact of the restrictions in the Act upon labor organizations in particular, and as distinguished from corporations.

ARGUMENT

I

Political activities of labor organizations are indispensable to implement their economic activities; political and economic activities are so closely intertwined as to be inseparable.

In order adequately to represent the interests of its membership, a labor organization must perforce enter the political arena, and labor organizations have customarily and traditionally done so. The rights of freedom of speech and the press and the right of assembly are cognate rights (*Thomas* v. *Collins*, 323 U.S. 516), and the exercise of working men of their right of assembly by associating themselves together into labor unions is inseparable from their right to speak on matters which are of concern to them.

A labor organization is a voluntary association formed for the mutual betterment of its members. Individual workers join a labor union so as to derive the strength, influence and power that come from association and concerted action with others (*Gompers* v. *Buck Stove & Range Co.*, 221 U.S. 418); the union is constituted as their spokesman and as the vehicle for their collective expression and action.

Organized labor has learned from experience that political action cannot be disassociated from economic action. Properly to promote the welfare of its members and to protect their rights, a union cannot confine itself to the processes of collective bargaining alone.

While wages and hours and conditions of employment are paramount, they are by no means exclusive subjects of activity. An aggressive legislative program, for example, is an essential function of a labor organization. A union may not realistically bargain with an employer for higher wages and shorter hours and ignore legislation establishing minimum wages and maximum hours. And, of course, the obtaining of higher money wages is nullified unless real wages and purchasing power are protected by effectual government action from the assault of inflation. Similarly, a union's efforts to protect its members' interests may be directed on the one hand to seniority and job security provisions in collective bargaining agreements with employers, and on the other hand to social security, unemployment insurance, workmen's compensation, and health, sanitation and safety legislation, formulated far from the collective bargaining table in the halls of Congress or the state legislatures. The bargaining process, itself, is rendered insecure without legislative protection. This is particularly true in respect to legislation affecting women and minors; without such protections the standards of all workers would be imperiled. The compelling importance of union participation in such other legislative programs as housing and rent control, employment stability, fair employment practices, education and taxation has long been apparent.[2]

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[2] See *U. S. Department of Labor Monthly Labor Review* for March, 1947, at p. 400, where it is stated:

"One of the major efforts of labor unions in this country has been directed toward the standardization of working conditions throughout an industry or area, in order to lift sub-standard wages and to eliminate or reduce the factors of wages and hours in competitive costs. One of the ways the labor movement has sought to attain this objective has been by pressing for Federal or State legislation for the

Laws, good or bad, cannot be disassociated from the people who make them. A legislative program is ineffectual unless coupled with an active political program. So that government may be responsive to the will of the people (*Stromberg* v. *California*, 283 U.S. 359, and *DeJonge* v. *Oregon*, 299 U.S. 353), the legislators must be informed emphatically of the desires of their constituents. It can hardly be doubted that the responses of the legislators are keenest at election time. Thus the supporting of legislators who favor desirable legislation and the opposing of those who thwart it, is a necessary part of a legislative program.

Accordingly, the interest of a labor organization in elections and in the previous steps of the electoral process, including conventions and primaries, is not only proper, it is inevitable. The fulfill its obligations to its membership a labor organization must determine, formulate and give utterance to the views of its membership on legislative and political matters. With the realization that whether certain legislation will be enacted depends most frequently upon what persons are elected to office, a labor organization must be free to give expression to the views of its membership at election time; it must be free to support or oppose candidates on their record of the past and on their program for the future. To accomplish its purpose of the mutual betterment of its members a labor organization must speak to legislators and candidates as well as to employers; it must conduct activity in

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protection of certain groups of workers or to establish minimum standards applicable to all workers. Legislation has been sought especially for women and minors on the ground that the interests of society as a whole require that the health and welfare of these groups of workers be protected, and also because they often are in a weak bargaining position and might be used to lower the standards of all workers. Certain minimum standards of health, safety, and sanitation were established by legislation when large sections of the population felt a need for such, and the labor movement from time to time has favored legislative action as the most effective remedy for problems of health and safety. Under the Fair Labor Standards Act, minimum wage and hour standards have been established in much of American industry, thus raising the area of collective bargaining on these issues to higher levels."

the forum of public opinion as well as at the bargaining table.

The broad scope of contemporary interests and purposes of labor organizations in the legislative field is illustrated by Article II of the Constitution of the American Federation of Labor, entitled "Objects." This reads as follows:

Article II—Objects

SECTION 1. The object of this Federation shall be the encouragement and formation of local Trade and Labor Unions, and the closer federation of such societies through the organization of Central Trade and Labor Unions in every city, and the further combination of such bodies into State, Territorial, or Provincial organizations to secure legislation in the interest of the working masses.

SEC. 2. The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

SEC. 3. The establishment of Departments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

SEC. 4. An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor.

SEC. 5. To aid and encourage the labor press of America.

The constitutions of most of the National and International Unions affiliated with the American Federation of Labor are in similar vein.

None of the foregoing considerations are applicable to the ordinary business corporation. Corporations do not necessarily enter the political arena. Few, if any, corpora-

tions state as one of the objects of their incorporation the procuring of legislation in the interest of stockholders. A corporation is formed and established for purposes entirely different from that which labor organizations are formed and established. To view prohibitions on political expenditures by corporations in the same light as prohibitions on political expenditures by labor organizations is absurd and disregards the realities of our contemporary political and industrial life.

II

Under no circumstances can the infringements of civil liberties be justified on the theory that they are necessary to keep pure the electoral processes; rather does the purity of our elections depend upon the extent to which freedom of expression is protected and encouraged; the foreclosure of full discussion on political questions invites rather than prevents corruption.

It is contended that the infringement of the constitutional liberties affected by Section 304 is justified under the obligation of Congress to keep the electoral processes pure and free from corruption. The assertion that the stifling of freedom of expression, the silencing of millions of citizens speaking through their organizations, the muzzling of political argument and opinion, the assertion that these things are needful to keep pure our elections runs counter to every theory of democratic government and defeats the very purpose for which the Bill of Rights was written. The protection of political expression and of the right to criticize government and government officers was certainly the most important purpose of the First Amendment.

1. The preservation of freedom of political expression is an absolute requisite, without which our electoral processes cannot be kept pure.

It is axiomatic that purity of elections and freedom of government from corruption depend on freedom of ex-

pression. This proposition was recognized and affirmed in Revolutionary days and on innumerable occasions since then.

> "The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honorable and just modes of conducting affairs." (Letter of Continental Congress to Inhabitants of Quebec), *Journal of the Continental Congress* (1904 Ed.) Vol. I, pp. 104, 108.

President Madison, in his attack on the Alien and Sedition Laws of 1798, spoke of the "right of freely examining public character and measures, and of freely communicating thereon, which has ever been justly deemed the only effectual guardian of every other right." IV Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 561 (1836).[3]

In *Grosjean* v. *American Press Co., Inc.*, 297 U.S. 233, at p. 250, the Supreme Court declared that:

> "Since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.

In the *Stromberg* case, *supra*, (at p. 369), the Court held:

> "The maintenance of the opportunity for free political discussion to the end that Government may be responsive to the will of the people and that changes

[3] See also letter of Jefferson to Lafayette quoted in *Writings of Thomas Jefferson* (Wash. Ed.), Vol. 37, p. 325.

may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."

Again, in *DeJonge* v. *Oregon, supra,* (at p. 365), the Court emphasized that "the greater the importance of safeguarding the community":

> "The more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly, in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."[4]

2. The suppression of freedom of political discussion invites corruption.

Just as the protection and encouragement of political expression safeguards democratic processes, so, correlatively, does the suppression of such expression invite corruption and prevent its redress. What safeguards are left if our legislators are permitted in a single enactment to promulgate legislation concerning—whether or not adversely—millions of people, and, at the same time, to silence those same millions from all effective criticism or even discussion of the enactment? It is submitted that Congress has attempted to do exactly that by the inclusion of Section 304 in the Labor-Management Relations Act, 1947.

In no way can it be urged that Section 304 is pertinent to labor-management relations. Although it is entirely foreign to the other provisions of the Act, yet it effectually silences the opponents of the Act. For when legislators are unresponsive to the will of their constituents, the

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[4] See also *Near v. Minnesota*, 283 U. S. 697; *Abrams v. United States*, 250 U. S. 616.

principal remedy those constituents have is to seek the defeat of the legislators when they desire continuation in office. To deprive those constituents, whether acting singly or in organizations of their own choice, from their right to political criticism at election time is to sterilize them politically and virtually to disenfranchise them. The result of such a situation would be to render the office holders immune from attack and to facilitate their perpetuation in office. The inherent opportunities for fraud and corruption are patent, and such a situation is intolerable in a democracy.

Section 304 is obviously "legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152 (footnote) (1938). If there were any doubt as to Congress' intention in including Section 304 in the Labor-Management Relations Act, 1947, the doubt is resolved by the application of the statute to the offenses alleged in the case at bar. For the sole purpose of the publication in question was to seek the defeat of a supporter of the Act and the election of a candidate pledged to amendment or repeal of the Act. Thus to stifle criticism can result only in the perpetuation of the Act in the body of our law and in the perpetuation of its supporters in office. This is a danger to our electoral processes and to free government itself which dwarfs the dangers asserted with regard to use of union funds in politics.

> *3. Labor in no way contributes or expends a disproportionate amount of the funds used in connection with political campaigns; no evidence has been adduced before Congress or elsewhere that contributions or expenditures by labor organizations constitute an evil or a danger to society.*

It is vigorously insisted that political expression by labor organizations, particularly in connection with elections and conventions, is salutory and beneficial and worthy of en-

couragement rather than limitation. But even the unsubstantiated "fears" that labor union treasuries constitute "aggregations of wealth," that such aggregations of wealth have been used in connection with the electoral process, and that such use places the electoral process in jeopardy are without basis in fact.

Contributions and expenditures by labor organizations in recent federal political campaigns have been an insignificant percentage of all contributions and expenditures, by the most extravagant estimates substantially less than 10 per cent. Contributions as such by labor organizations have been infrequent. Expenditures have been principally in connection with educational activities on political and legislative matters, and with "getting out the vote" in support of candidates whose record indicated that they would favor rather than oppose progressive social legislation.

While various reports of Congressional Committees contain some data on the budgets of labor groups for political purposes, we have been able to find no reference in Congressional findings or in floor debate to improper use of the money expended, to disproportionate, or even substantial, influence on the results of elections by such expenditures, or to any instance whatever where elections have been rendered "impure," or where fraud or corruption has resulted or could result from such expenditures.

Indeed, about the worst thing that has been said about labor's political activities was said by the 1945 House Special Committee with regard to the activities of political action committees. On page 3 of House Report No. 2093 (78th Cong. 2nd Sess.) the following appears:

> "The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for 'educational' work approximating $1,500,000, and among other things regularly supplies

> over 500 radio stations with 'briefs for broadcasters.' Another, with an annual budget of over $300,000 for political 'education,' has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political 'education' in a few months, and a great more has been raised for the same purpose and expended by its local organizations."

Congress was apparently more apprehensive of the exercise by labor of constitutional liberties than it was concerned with the illusory "danger" to society from such exercise.

But Congress has always recognized that expenditure of money in elections is not *per se* an evil.[5] Unless Section 304 can be supported on the ground that the limitation of civil rights is justified by a danger to society which is "real" and "imminent," arising out of expenditures by labor organizations, it cannot be supported on any ground at all. The fact that expenditures have been made and may continue to be made is not enough. There must be a positive basis in fact for the proposition that the making of such expenditures will lead to grave and immediate evils. The unsubstantiated "judgment" of Congress on this matter is not sufficient. The courts will be astute to examine the effects of the challenged legislation, and will answer independently the question as to the justification for the invasion of civil rights. See *Thomas* v. *Collins, supra.*

Even if a figure could be obtained representing the aggregate of all expenditures by labor organizations in connection with a national political campaign, that sum, when divided by the 15,000,000 members represented by organized labor, would be insignificant. When compared with the individual contributions of the country's large indus-

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[5] See Clark, *Federal Regulation of Election Campaign Activities* in 6 Federal Bar Journal.

trialists and their financial backers,[6] the minuteness of labor's expenditures appears in its proper perspective.[7]

Labor's part in politics, however, has been confined almost exclusively to the dissemination of information, a wholesome not a noxious activity. Its record in politics provides no basis for any type of regulation, much less regulation which trenches on guaranteed freedoms. No vague apprehension by the Congress that evils might result from political expenditures of labor organizations is sufficient to support the drastic destruction of civil rights accomplished by Section 304.[8]

The situation was very different in *United Public Workers* v. *Mitchell*, 330 U.S. 75, where the Court upheld the right of Congress to regulate limited political activities of government employees. The *Mitchell* case clearly presented a special problem. The limitation on political action was imposed on individuals of a particular category by virtue of the position they held; the closeness of federal employees to the functions of government, the special services of trust they render to the public, their exposure to pressure in connection with both government functions and political elections were all considered as grounds for special treatment. The Court commented on the unique relationship

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[6] In 1940, contributions of Lamont DuPont totaled $49,000, of Edgar Monsanto Queeny $40,375; the combined contributions of more than 60 members of the DuPont family totaled $200,000; the Pew family contributed $164,500; the Rockefellers, $100,000 (Sen. Rep. No. 47, 77th Cong. 1st Sess.). In 1944, the DuPonts gave $110,000; the Pews $97,000; the Mellons $59,500; the Guggenheims $28,000; the McCormicks $28,000; the Rockefellers $52,000 (Sen. Rep. No. 101, App. VIII, 79th Cong., 1st Sess.). It is to be noted that these figures represent contributions, not expenditures. In TNEC Monograph No. 29, Sen. Doc. 206, July 14, 1946, appears a listing of the corporations in which these families have a controlling or substantial interest or influence.

[7] See on this subject the several works of Overacker, particularly *Money in Elections, Presidential Campaign Funds, Party Campaign Funds* in 1932, 27 *Amer. Pol. Sci. Rev.* 769, *Campaign Finance in the Presidential Elections of 1940*, 35 *Amer. Pol. Sci. Rev.* 701; also *Odegard & Helms American Politics.*

[8] On the question of labor in politics, see Barbash, *Unions, Government and Politics*, 1 *Indust. & Labor Rel. Rev.* 66; Braunthal, *American Labor in Politics*, 12 Soc. Research 1; Frey 39 *American Federationist* 1012; Rosenfarb, *Labor's Role in the Election*, 8 *Pub. Op.* Q 376; Overacker, *Labor's Political Contributions*, 54 *Pol. Sci.* Q. 86.

of Congress and the administrative agencies to federal employees, stressing the responsibility for discipline and efficiency of the public service as part of a background against which the Court could not say that the restrictions were unconstitutional. In addition the Court carefully circumscribed the scope of its opinion to the approval of regulation "of such activities as Poole carried on," as to which it found that regulation was reasonable to forestall a "menace to the integrity and the competency" of government service. The *Mitchell* case, therefore, dealt in a specific manner with a problem which was *sui generis* and can in no way be considered as authority for a limitless curb on expression which would sterilize politically millions of citizens by preventing them from taking proper and desirable action through their organizations.

4. Abuses may be cured only by dealing with them specifically, not by curtailing basic rights.

It is by no means contended that Congress is powerless to act to cure abuses which threaten society or its institutions. Where it acts pursuant to the powers expressly conferred in or necessarily implied from the Constitution, it may pass reasonable laws designed to correct or prevent wrongdoing. Whether Congress is reasonably exercising permissive legislative powers is, of course, the principal question; but it has corollaries, not the least of which is that the cure may create evils worse than the disease.

The clear and present danger test is one means by which the Supreme Court assures that Congress may not create repression in an attempt to remedy fanciful or trivial wrongs, or even serious wrongs where they are not imminent. To the same end, the Supreme Court has insisted that the legislative remedy be designed narrowly to correct the specific wrong. The Court has announced and reiterated that where persons abuse rights created for their enjoyment, the solution is not to take away the rights but rather to attack the abuse itself.

The precise point was made by the Court in *DeJonge* v. *Oregon, supra* (at p. 364), when, though it conceded that the people through their legislators may protect themselves against abuse of the freedoms given them, it declared that

> "The legislative intervention can find constitutional justification by dealing with the abuse. The rights, themselves, must not be curtailed."

In the *Thornhill* case, 310 U.S. 88 (at p. 105), the Court invalidated an ordinance directed at picketing, which proscribed nearly every practicable means of public enlightenment and insisted that if there were a danger, the regulation must be "narrowly drawn to cover the precise situation giving rise to the danger." Similarly, in the *Schneider* v. *State*, 308 U.S. 147 (at p. 162), where the licensing requirement was defended on the basis of a need to prevent street littering, the Court pointed out that to protect freedom of speech and the press by striking down the licensing requirement did not deprive the city of all power to prevent street littering. "There are obvious methods to prevent littering," the Court stated: "Amongst these is punishment of those who actually throw papers on the streets."

In *Lovell* v. *Griffin*, 303 U.S. 444 (at p. 451), the Court invalidated the requirement for distributors to obtain a permit on the ground that it was:

> "not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager.
>
> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press."

Under this controlling authority, it is clear that Con-

gress may not ban all political expression of labor unions to correct ephemeral abuses, or even to correct abuses which may actually be in existence. Thus if, under certain circumstances, unbridled freedom of expression tends to corruption, the remedy should be directed at the corruption and not at the right of speech. If the purpose is to prevent the unauthorized use of funds, or to protect the union membership from unreasonable use of power by union officers, or to prevent any other specific wrong,[9] the statute must be so drawn that it attacks the wrong directly and exclusively. Wholesale negation of constitutional liberties can never protect, but can only impair democratic processes.

Since, therefore, purity of elections depends on the encouragement of free political expression rather than its limitation; since its suppression can only facilitate corruption; since there were no facts before Congress establishing that labor union expenditures for political purposes endanger society; and since the statute is a broad abnegation of all rights rather than an attack on any specific wrong—it follows that Section 304 must fall as an unwarranted and unreasonable infringement of civil liberties and as a threat to democracy itself.

III

Action by a labor organization in the political field is taken for the membership as a whole, and no questions of minority disagreement are applicable.

It is also argued by the Government that an objection to labor union expenditures for political purposes is that

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[9] It is not suggested that Section 304 is in fact directed at any particular wrong such as those enumerated; indeed, in the absence of any authority in Congressional reports or debate, it must be presumed that Congress had no specific wrong in mind, but rather was acting deliberately to curb freedom of expression. The only hint as to a possible basis relates to the so-called "coercion of minority" argument widely used subsequent to the enactment to justify it; the reports are silent on this and the debates contain only a few isolated references, such as the rhetorical question of Senator Taft at 93 *Cong. Rec.* 6440: "Does the Senator think the union members should be forced to contribute . . . to the election of someone they do not favor?" This argument will be discussed infra.

there may be a minority whose views differ from those of the organization and that this minority would be coerced, possibly to the extent of contributing to the support of a candidate whom they did not favor.[10] The extension of this doctrine to its logical conclusion would result in the complete atomization of labor organizations and their eventual destruction.

Labor organization activity is group activity. But group activity is not predicated upon group unanimity. In voluntarily associating himself with a group, an individual seeks the benefits and advantages that come from association with his fellows. In return, however, for the added strength and influence that flows from action in concert with others, the individual necessarily must give up certain privileges which he might enjoy independent of the group. The American concept of government has its basis in the recognition of the will of the majority; it cannot be maintained that majority rule is inconsistent with democracy. Community activity and group activity are similarly based on majority rule; for complete independence of the individual negates the existence of a group.

In labor organizations, as in any other field in which groups function, it is clear that individual views and personal interests must be made secondary to group views and group interests. When a union, by majority action, determines the wage schedule it will seek in bargaining with an employer, the group is bound, though there may be individuals whose opinion it is that a higher or a lower wage schedule should be sought. That a seniority clause in a labor agreement benefits the senior employees to a greater extent than the junior employees in no way justifies the contention that it is invalidated on the theory that the junior employees are coerced into accepting it; for the junior employees are more than compensated by the protection afforded by the clause to the group as a whole and

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[10] See Note 9, *supra*.

by the advantages derived by their association with the group.

It cannot be contended that majority rule is any less appropriate to decisions having to do with the expenditure of funds for proper union purposes than it is appropriate to any other decisions of the union. An expenditure may be desirable to facilitate collective bargaining with the employer; if the union membership votes, or its authorized officers decide, to make such an expenditure, it may be properly made whether or not some of the individual members disagree with its purposes. So also if a union determines to spend money in support of particular legislation, the funds of the group may be spent although certain of its members may not favor that legislation. The situation is indistinguishable when the union votes, or its authorized officers decide, to spend money to give expression to the organization's views in support of or in opposition to a particular candidate for office on the basis of his legislative record or program, even though in the group there may be some who disagree with the organization's view with regard to that candidate.

By joining and remaining a member of a group, an individual obligates himself to comply with the proper decisions of the group. He is not absolved from his duties to contribute to group activities or finances merely because he disagrees with the determinations reached by the majority. A dissenting union member may not withdraw his dues and retain his status as a member; nor may he insist that his dues be not used for any particular lawful purpose of the group.

In *DeMille* v. *American Federation of Radio Artists*, 42 *American Labor Cases* 12 (certiorari denied by U. S. Supreme Court April 19, 1948), a unanimous California Supreme Court upheld the right of a union to engage in and make expenditures for political activity to promote the interests of the union. In that case the union assessed each of it members $1.00 to raise funds to oppose certain proposed

state legislation; DeMille favored the legislation, refused to pay the assessment and was expelled. The Court emphasized that his disagreement with the purposes of the majority did not free him from his obligations as a member, and that majority rule prevailed in all constitutional government and was essential to the effective functioning of labor organizations. The Court stated:

> "The principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations such as medical associations, bar associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority of its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

To argue that dissenters are not bound by majority decisions is to argue that they are separable from the group itself. This theory would lead out the minority on any given issue and the group existence would be destroyed.

It is equally indefensible to argue that it does not impair civil rights to deprive a labor union from political expression on the ground that the members favoring such expression can give utterance to it as individuals or as a separate group of their own. This argument results in leading out the majority on a given issue and is as destructive of group existence. To deprive a labor organization of civil rights cannot be justified on the premise that its individual members are free to form another group to exercise those rights.

It should be noted that Section 304 is in no way directed at the protection of the minority. Expenditures of a

labor organization are banned by the section even where the membership unanimously approves them. If Congress had drawn the statute narrowly so as to require the assent of the membership or so as to permit dissenting members to withdraw their respective contributions to the expenditure, it would still, we submit, be unconstitutional in light of the considerations stated above. But it is not so drawn and neither its context nor the debate prior to its enactment warrants the suggestion that the statute is anything less than a broadside assault on the freedom of political expression guaranteed by the First Amendment.

CONCLUSION

The First Amendment freedoms of speech, press, assembly and petition are among the most sacred in our heritage. So protected are they that the courts, discarding the usual presumption of validity attaching to legislative enactments, will determine independently whether infringements must be sanctioned to prevent imminent peril to society. The freedoms are to be enjoyed by labor organizations as well as by the individual members thereof, for otherwise the right to assemble for lawful purposes would have no meaning.

To ban expenditures made to facilitate the expression of opinion is to prohibit the expression itself, for without expenditures the communications media are not available. Moreover, the prohibition of political expenditures cures no danger to society. On the contrary, the silencing of political expression will place society in the gravest jeopardy. The record in this case is bare of any indication that political expenditures by labor organizations have created abuses or are likely so to do in the future; if such abuses should appear, Congress may deal with them directly, not by a broad denial of civil rights.

Labor organizations cannot fulfill their obligations to their membership without entering the political arena.

Political action by unions is a necessary and proper function. Such action is taken on behalf of the group, as a whole, and is proper as group activity, whether or not there is unanimity within the group.

The inclusion of the section prohibiting political expenditures in the Labor-Management Relations Act, 1947, tends to perpetuate legislation which at least a substantial number of the electorate consider bad. By stifling criticism at election time, it tends to perpetuate in office the sponsors and supporters of the legislation. Such a situation is intolerable in a democracy, for if public officers can immunize themselves to popular criticism, they need no longer be responsive to the will of the people.

On its face and as applied in the instant case, Section 304 is repugnant to the First Amendment, and constitutes a menace to civil rights which can be remedied only by its invalidation.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 695.

UNITED STATES OF AMERICA,
Appellant,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, Officer Thereof,
Respondents.

BRIEF OF INTERNATIONAL ASSOCIATION OF MACHINISTS AS *AMICUS CURIAE.*

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UNITED STATES OF AMERICA,

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CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, Officer Thereof,

Respondents.

BRIEF OF INTERNATIONAL ASSOCIATION OF MACHINISTS AS *AMICUS CURIAE.*

Statement.

Pursuant to leave granted by this Court and the consent of the parties hereto, the International Association of Machinists (herein called the I. A. of M.) submits this brief as *amicus curiae* in support of respondents' contention that Section 304 of the Labor-Management Relations Act of 1947 is unconstitutional and void.

Interest of the I. A. of M.

The I. A. of M. is one of the five largest labor organizations in the United States, having a membership of over 600,000. The I. A. of M. and its constituent district and local lodges negotiate and consummate approximately

11,000 labor agreements with management each year governing the wages, hours and working conditions of its membership. Its members are employed in the metal trades, on the railroads, in the aircraft industry and in the shipyards and thus perform essential functions in the most vital industries in the country.

Representing such a large segment of organized labor, the I. A. of M. has a special responsibility to its membership and to the country as a whole to state publicly its position in connection with Section 304 of the Labor-Management Relations Act of 1947, and to urge upon this Court that because this Section strikes a mortal blow at the freedoms of speech, press and assembly, and threatens the very foundations of representative government, it should be declared null and void.

The Statute Involved.

"Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

'Sec. 313. It is unlawful for any national bank, or any corporation organization by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to

select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work'" (*Public Law 101, 80th Congr., 1st Session*).

The Facts.

The indictment in this case resulted from the expenditure of union funds in connection with the publication in the July 14, 1947 issue of the "CIO News" of an editorial endorsing a candidate for Congressional office, signed by respondent Philip Murray. It is alleged in the indictment that respondent Congress of Industrial Organizations (herein called the CIO) made certain expenditures from its general funds in publishing and circulating this issue of the "CIO News", that respondent Murray knew of and consented to this action and that both respondents thereby violated Section 304 of the Act.

On February 20, 1948, respondents moved to dismiss the indictment, and on March 15, 1948, this motion was

granted by the United States District Court for the District of Columbia (MOORE, *D. J.*).

The case is here on certiorari.

I.

Section 304 abridges freedom of speech and press and the right of assembly and petition, in violation of the First Amendment.

A. Labor organizations are within the protection of the First Amendment.

The freedoms guaranteed by the First Amendment are not the special property of any particular group. They are available alike to individuals, corporations, and unincorporated associations. This obvious fact, however, was apparently overlooked by Congress when it enacted Section 304 of the Labor-Management Relations Act of 1947, for in so doing it stripped the freedom of expression from millions of organized workingmen.[1]

There is no liberty more basic and more important to workingmen than their freedom to express themselves concerning the affairs of the day. The ability to advocate support of favorable legislation and candidates for office

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[1] "That the State has power to regulate labor unions with a view to protecting the public interest is * * * hardly to be doubted. They cannot claim special immunity from regulation. Such regulation, however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly." (*Thomas* v. *Collins*, 323 U. S. 516, at p. 532.)

* * * *

"Necessarily correlative was the right of the union, its members and officials * * * to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment." (*Id.*, at p. 534.)

who favor such legislation is an integral part of their economic struggle for better wages, hours and working conditions. It is inseparably identified with their daily need to feed, clothe and shelter themselves and their families.

Without this liberty, much of the statutory law which exists today to protect labor's rights might never have been enacted. Because of labor's exercise of its right of freedom of speech, press and assembly, our country has made great forward strides since the days when organized groups of workers were considered criminal conspiracies. Labor unions have been in the forefront of the campaigns for such measures as child labor laws, unemployment insurance, social security legislation, wage and hour laws, rent control, price control, fair employment practices and the like. The very right of workingmen to organize and bargain collectively is a monument to labor's exercise of its liberty of expression. Higher wages won at the bargaining table would mean little if trade unions could not also urge the passage of socially beneficial legislation of the type mentioned.

But freedom of speech and press in areas such as these is meaningless if it cannot operate on a group basis. It is precisely for the purpose of making such freedoms more effective that laboring men organize into unions. As individuals, they are helpless economically and politically.[2] In a union they are part of a voluntary group from which they derive collective strength.

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[2] "Labor unions * * * were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family * * *. Union was essential to give laborers opportunity to deal on equality with their employer." [*American Steel Foundries* v. *Tri-City Central Trades Council* (1921) 257 U. S. 184, at p. 209.] See also *N. L. R. B.* v. *Jones & Laughlin Steel Corp.* (1936) 301 U. S. 1, at p. 33.

"E pluribus unum" is stamped on every United States coin for no idle purpose. The ability of individuals to join together for their common good is the foundation stone on which our democracy rests.

Why, then, should workingmen not have the right to pool their resources to avail themselves of the press, the radio, the amphitheatre and the meeting hall, to endorse or oppose legislation which affects their daily bread and butter; to publicize the voting records of candidates for office on matters affecting labor; to advise their fellows as to who are their friends and who their enemies; to educate and inform concerning laws which will affect them for good or ill? They have indeed such a right—in fact they have a duty to do so.

Such group activity is not denied to associations of employers. Unincorporated associations with an anti-labor point of view have consistently played a leading role in our political and legislative processes.[3] To strip unions of these protected rights, as Section 304 has done, is to leave the fate of legislation and the result of elections in the hands of groups who, though numerically small, are powerful financially and have demonstrated through the years that labor can ill afford to trust its interests to them.[4]

The nationwide political battle over the proposed passage of the Labor-Management Relations Act is still fresh in mind. United employer groups on the one side and labor groups on the other, engaged in meetings and demonstrations, sent delegations to Congress, testified

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[3] See Chase, *Democracy under Pressure* (1945); Crawford, *The Pressure Boys* (1939); Gruening, *The Public Pays* (1931).

[4] "The influence of great wealth in party activity is persistent and at times unchallenged; it is kept in check only by the challenge of other groups with power enough to rise from time to time and raise an effective barrier to the progress of wealth." Key, *Politics, Parties and Pressure Groups* (1942); p. 49.

at hearings, and advertised their point of view in the newspapers and over the radio. Had Section 304 already been the law at that time, however, only one point of view could have been expressed. Supporting the bill with impunity we would have heard the voices of all unincorporated associations of manufacturers, chambers of commerce and anti-labor groups generally, not to speak of individuals of wealth such as large corporate stockholders. But from the side of labor there would necessarily have been silence.

This is precisely the situation today. The Labor-Management Relations Act is a self-perpetuating instrument of oppression which silences the voices of those most interested in its repeal. Moreover, in curbing labor's freedom of speech it effectively prevents unions from campaigning for the passage of a great variety of other still-needed legislation beneficial to workingmen and to society in general.

The First Amendment protects employers, say the courts. [*N. L. R. B.* v. *Virginia Electric & Power Co.* (1941), 314 U. S. 469, 477; *N. L. R. B.* v. *American Pearl Button Co.* (C. C. A. 8, 1945), 149 F. (2d) 556; *N. L. R. B.* v. *J. L. Brandeis* (C. C. A. 8, 1944), 145 F. (2d) 556; *N. L. R. B.* v. *American Tube Bending Co.* (C. C. A. 2, 1943), 134 F. (2d) 993, cert. den. 320 U. S. 768.] We do not dispute that it does and should. But we also urge that the Constitution protects labor unions to the same extent; no more and no less.

B. In prohibiting "expenditures in connection with any election" Section 304 prohibits the free expression of political opinion.

While Section 304 on its face does not purport to restrict the freedom of speech, press and assembly of labor organizations, it is in fact a thinly-disguised device to prevent such organizations from engaging in any effective political activity. The ban on "expenditures" is a ban on the activity itself.[5]

The protected freedom of political expression does not exist in *vacuo*. It would be a meaningless freedom indeed were it untranslated into the realities of the everyday world. The peaceful expression of political opinion, the advocacy of acceptance or rejection of a particular piece of legislation or the candidacy of a particular individual, would be impotent acts were it not for the availability of the media of mass communication.

It is impossible to determine how a labor organization can have access to these media without the expenditure of funds therefor. The bare "right" without the accompanying freedom to exercise it in the only manner in which it can be exercised is, in effect, a denial of the right. The Section makes such expenditure a criminal act, with attendant penalties of fine and possible imprisonment. By so doing, it effectively bars such organizations from the use of all the effective devices for the dissemination of political opinion.

Under Section 304, a labor union may not buy radio time, purchase a newspaper advertisement, or distribute handbills, to urge the defeat of a Congressional candidate whom it deemed hostile to labor's interests. It may not invite a candidate to address its membership in a hired

5. While "contributions" also fall under the statutory prohibition, they are not involved in the case at bar. There is no claim in this case that respondents donated sums of money to any political party or candidate.

meeting hall, nor could it use such hall for the purpose of holding a political debate at which all candidates appeared. It could not publish in its own newspaper or monthly magazine (as in the case at bar) its advocacy of a particular political candidate, and would be prohibited from analyzing the voting records of various candidates for federal election even were it to refrain from outright endorsement or rejection of their candidacy.[6]

In *Bowe* v. *Secretary of the Commonwealth* (Mass., 1946), 320 Mass. 230, a proposed State enactment strikingly similar to Section 304 was held unconstitutional. The proposed law provided in part that "no labor union or any person acting in behalf thereof shall directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters." The Court stated that in barring union expenses in connection with elections, the proposed law deprived unions of any substantial and effective political activity (320 Mass., at p. 252):

"* * * under the proposed law the political activities of labor unions are not regulated or curbed but are

6 "Mr. PEPPER. Suppose a labor union felt that a candidate for office was unfair to labor, and that labor union wished to put out a pamphlet to advise its members about the labor record of the candidate. I ask the Senator from Ohio whether that would be forbidden as an expenditure by a labor organization in respect to a candidate or an election under the proposed act?

"Mr. TAFT. Yes, I think it would be.

"Mr. PEPPER. So a workingman's organization would be deprived of the power even of advising its membership of the antilabor record of a man who might be a candidate for public office?

"Mr. TAFT. Correct * * *." (*Congr. Rec., Sen.*, June 5, 1947, p. 6395.)

substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled * * *."

The effect of the prohibition on "expenditures" contained in Section 304 is analogous to the restrictive effect of so-called "regulatory" laws which in practice limit the freedom of speech and press. This Court has always been astute to strike down such laws. [*Thomas* v. *Collins* (1946), 323 U. S. 516; *Martin* v. *City of Struthers* (1943), 319 U. S. 141; *Schneider* v. *State* (1939), 308 U. S. 147; *Hague* v. *CIO* (1939), 307 U. S. 496; *Lovell* v. *Griffin* (1938), 303 U. S. 444; *Grosjean* v. *American Press Company, Inc.* (1936), 297 U. S. 233.]

In *Thomas* v. *Collins*, *supra*, 323 U. S. 516, this Court held unconstitutional a Texas statute which required union organizers to register with the Secretary of State and procure an organizer's card before soliciting members, on the ground that the law in effect restricted the right of free speech and discussion. In *Martin* v. *City of Struthers*, *supra*, 319 U. S. 141, an ordinance prohibiting the ringing of doorbells by persons distributing handbills was held a violation of free speech and press. In *Schneider* v. *State*, *supra*, 308 U. S. 147, the requirement of a license for the distribution of circulars by canvassers, purportedly designed to prevent littering of the streets, was held unconstitutional for the same reason. And in *Lovell* v. *Griffin*, *supra*, 303 U. S. 444, this Court invalidated an ordinance prohibiting the distribution of

literature without the permission of the City Manager as a denial of free speech.

C. Section 304 abridges the right of peaceable assembly and to petition the Government for a redress of grievances.

Any effective political activity, as we have shown, requires the expenditure of money. The right to assemble peaceably and to petition the Government for redress of grievances are within the specific protections of the First Amendment, and the exercise of such rights is a normal and necessary political activity.

In the present era, "petitioning the Government" takes the form of mass delegations to individual Congressmen, organized mail or telegram campaigns to members of Congress, or perhaps even the giving of testimony before Congressional Committees considering proposed legislation. In the broadest sense, this right also includes the right to appeal to the electorate to elect persons to office who may redress the grievances caused by their predecessors.

Here, too, the right is a meaningless one unless labor unions can educate and inform their membership concerning the issues involved. Most unions have research and education departments whose very function this is. Inability to disseminate the information to the membership would therefore nullify the right of petition for redress of grievances.

Section 304 bars all such activity on the part of a union. In so doing, it violates the First Amendment:

> "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public

affairs and to petition for a redress of grievances." [*United States* v. *Cruikshank* (1876), 92 U. S. 542, at p. 552.]

D. The vagueness of the Statute renders it constitutionally defective.

The language of Section 304 is so vague and all-inclusive that its effect is to curb even activity that might not be held to be within its ambit. Fear by unions that a given "expenditure" might be held to be "in connection with an election" and thus subject them to criminal prosecution is so inhibiting as to paralyze political expression completely.

As we shall subsequently show, *infra*, the legislative history of the Labor-Management Relations Act of 1947 demonstrates utter confusion among the legislators themselves as to the particular types of expenditures that would fall under the ban of Section 304. Suffice it to say for the moment, that Senator Taft himself, proponent of the law in question, recently conceded that the Section "might be ambiguous".[7]

Such concession was not necessary to demonstrate the ambiguity. What constitutes expenditures "in connection with an election" a union must perforce leave to the *ex post facto* determination of a court which must then decide for the first time whether or not the activity was within the coverage of the law. An "election" cannot be artificially segregated from all the political steps that have preceded it, such as the conventions, the campaigns, and the formulation of platforms and issues. Who is to say where it begins or ends? Moreover, even post-election expenditures might well come under the statutory prohibition, where, for example, a union publishes an edi-

[7] *New York Herald Tribune*, Feb. 26, 1948, p. 2, col. 5.

torial in its newspaper deploring or approving the election results.[8]

Were this not a sufficient ambiguity, the use of the word "expenditure" brings up a host of additional confusions to confront already-bewildered minions, which, we may assume, would be loath to commit a Federal crime. A special committee to investigate Senatorial campaign expenditures in 1946 reported, for example, that the definition of "expenditure" as well as "contribution" as contained in the "Corrupt Practices Act" was vague and indefinite and that "failure to further prescribe within more exact limits the nature of each has consistently caused confusion * * *."[9]

A statute limiting freedom of expression which is so vague that it fails to give fair notice of what acts will be punished is unconstitutional as a violation of freedom of speech and press. [*Winters* v. *People of the State of New York* (U. S. Supr. Ct., Mar. 29, 1948, not yet officially reported); *Thomas* v. *Collins*, *supra*, 323 U. S. 516, 536-7; *Thornhill* v. *Alabama* (1940), 310 U. S. 88; *Herndon* v. *Lowry* (1937), 301 U. S. 242; *Near* v. *Minnesota* (1931), 283 U. S. 697, 712; *Stromberg* v. *California* (1931), 283 U. S. 359, 369.]

In *Winters* v. *People of the State of New York*, *supra*, this Court held invalid a penal statute of New York State

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8 "Mr. TAFT. The question as to whether it is in connection with an election I suppose depends on how close it is to the election; how closely it is tied in with something which is a direct issue of the election." (*Congr. Rec., Sen.*, June 5, 1947, p. 6605.)

Senator Taft offered no assistance, however, in determining how to test the "closeness" with which the activity is "tied in" with a "direct issue" of the election.

9 *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (Sen. Rep. No. 1, Pt. 2, 80th Cong., 1st. Sess.)

which made it a misdemeanor to sell "any book * * * or other printed paper * * * principally made up of * * * accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." The New York Court of Appeals had construed this language to prohibit the sale of stories "so massed as to become vehicles for inciting violent and depraved crimes against the person". In finding this law unconstitutional, this Court held that the statute was so vague that it failed to give fair notice of what acts would be punished and thereby violated the First Amendment:

> "A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expression, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press." (*Winters* v. *People of the State of New York*, *supra*.)

And, prophetically, this Court stated that while in that case it was protecting the liberties of a purveyor of allegedly vulgar magazines, it had in mind that a case might thereafter come before it involving the free expression of political views:

> "* * * despite the difficulties, courts must do their best to determine whether or not the vagueness is of such a character 'that men of common intelligence must necessarily guess at its meaning' * * *. The present case as to a vague statute abridging free speech involves the circulation of only vulgar magazines. The next may call for decision as to free expression of political views in the light of a statute intended to punish subversive activities.
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> "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sus-

tained." (*Winters* v. *People of the State of New York, supra.*)

Thus the vagueness of Section 304 makes its very existence an over-all and continuing threat to the liberty of speech and press of labor organizations, and paralyzes freedom of discussion:

> "Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas * * *. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." (*Thornhill* v. *Alabama, supra,* 310 U. S. 88 at pp. 97-8.)

E. This restriction on free speech is not justified by any "clear and present danger".

So basic and vital are the liberties guaranteed by the First Amendment that this Court has been most zealous in its scrutiny of enactments which threaten to or curtail these liberties [*Thomas* v. *Collins, supra,* 323 U. S. 516; *Bridges* v. *California* (1941), 314 U. S. 252; *Thornhill* v. *Alabama, supra,* 310 U. S. 88; *Schneider* v. *State, supra,* 308 U. S. 147, 161]. As a further safeguard, this Court has even refused to indulge in the usual presumption of constitutionality where the First Amendment is involved:

> "The usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." (*Thomas* v. *Collins, supra,* 323 U. S. 516, 530.)

Only where there is a "clear and present danger" to be met are legislative encroachments upon the absolute freedom of speech and press permissible [*Thomas* v.

Collins, supra, 323 U. S. 516, 529-30; *W. Va. State Board* v. *Barnette* (1943), 319 U. S. 624, 639; *Bridges* v. *California, supra*, 314 U. S. 252, 263; *Thornhill* v. *Alabama, supra*, 310 U. S. 88, 104; *Cantwell* v. *Connecticut* (1940), 310 U. S. 296, 311; *Schenck* v. *United States* (1919), 249 U. S. 47, 52].[10] The substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished:

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished * * *. For the First Amendment * * * must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." (*Bridges* v. *California, supra*, 314 U. S. 252, at p. 263.)

It is fair, then, to ask: by what standards of justice, morality or everyday common sense can the actions of respondents in the case at bar be termed "dangerous"? They advocated in their union newspaper the election of a Congressman who, they felt, would be opposed to the continued existence of the Labor-Management Relations Act of 1947. We fail to perceive any threat to our society in this perfectly democratic and peaceful action.

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[10] "The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected." (Chafee, *Free Speech in the United States*, 1941 ed., p. 35.)

Not only was there no "danger" in the actions of the respondents at bar, but to the best of our knowledge Congress had before it not a scrap of evidence of any over-all "danger" prior to the enactment of the Act which the prohibition of "expenditures" might presumably have been designed to remedy. Nor have we been able to find any evidence relating to political contributions or expenditures which was presented either to the House or Senate committees holding hearings on the proposed legislation as a whole.[11] What concrete evidence Congress did have affirmatively demonstrated the contrary; namely, that no "evil" or "danger" in fact existed.[12]

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[11] On the floor of the House, discussion of the measure was practically non-existent. Prior to the conference between Senate and House managers, the Senate had not even discussed the section, and in fact the section did not appear in the original Senate bill; and the House had heard only one speech, this by Representative MILLER, of California, consisting of a penetrating attack on the section as an unwarranted limitation on the rights of freedom of speech, press and assembly (*Cong. Rec., House*, April 16, 1947, pp. 3580-1).

[12] See remarks of Representative MILLER, of California (*Cong. Rec., House*, April 16, 1947, pp. 3580-1):

> "The evil which the prohibition seeks to correct is in fact nonexistent. The widespread activity of the Political Action Committee of the CIO in the elections of 1943 and 1944 was the signal for a furious campaign against it in the press and in Congress. Demands were made upon Congress for an investigation on the ground that the Corrupt Practices Act as amended by the Smith-Connally Act was being violated. In the midst of this furor the Senate Special Committee to Investigate Presidential, Vice Presidential and Senatorial Campaign Expenditures in 1944 was convened for the purpose of hearing testimony by the chairman of the Political Action Committee. A majority of the special committee found no violation of the Corrupt Practices Act on the part of the Political Action Committee and the Attorney General discovered no violation of the Criminal Provision Act after investigations initiated at the request of several Members of Congress—Senate Report No. 101, page 23, Seventy-ninth Congress, first session."

F. The restriction is not justified as a means of preserving elections from "corruption".

In the Court below, the Government sought to justify the invasion of the basic freedoms here involved on the basis of Congressional control over elections. The suppression of debate is neither a proper nor effective exercise of Congress' power to preserving elections from corruption. On the contrary, only by the encouragement of freedom of expression of political opinion can the purity of elections be maintained (*Thornhill* v. *Alabama, supra,* 310 U. S. 88, 95; *DeJonge* v. *Oregon, supra,* 299 U. S. 353, 365; *Grosjean* v. *American Press Co., Inc., supra,* 297 U. S. 233, 250; *Stromberg* v. *California, supra,* 283 U. S. 359).

> "We must do more than remove the discouragements to open discussion. We must exert ourselves to supply active encouragements" (Chafee, *Free Speech in the United States,* 1941 ed., p. 559).

In *Thornhill* v. *Alabama, supra,* this Court held that the safeguarding of the right to speak as one thinks is essential to free government (310 U. S. 88, at p. 95):

> "The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government * * *. Abridgement of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government."

And in *DeJonge* v. *Oregon*, *supra* (299 U. S. 353, at p. 365):

> "The greater the importance of safeguarding the community the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly, in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

And in *Grosjean* v. *American Press Co., Inc.*, *supra*, 297 U. S. 233, at p. 250:

> "Since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

Where the electoral process is in fact abused or corrupted Congress is not powerless to act. But remedial legislation must be narrowly drawn to correct the abuse itself, not to take away basic rights (*Thornhill* v. *Alabama*, *supra*, 310 U. S. 88, 105; *Schneider* v. *State*, *supra*, 308 U. S. 147, 162; *Lovell* v. *Griffin*, *supra*, 303 U. S. 444, 451; *DeJonge* v. *Oregon*, *supra*, 299 U. S. 353, 364). In *DeJonge* v. *Oregon*, *supra*, 299 U. S. 353, at p. 364, this Court held that "the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

Judged by this standard, Section 304 of the Labor-Management Relations Act of 1947 can hardly be said to be "narrowly drawn" to correct a specific abuse. In

preventing a labor organization from spending one penny of its funds to pamphletize, hire a meeting hall, buy radio time, or publish articles in its newspaper or magazine, where the subject matter is "in connection with" a federal election, this enactment has effectively crushed the freedom of speech and press of all labor organizations and their members in the broadest, most comprehensive manner. This is not the correction of an abuse; it is the creation of that very evil.

G. The restriction is not justified as a means of "protecting the minority".

Implicit in certain statements by proponents of Section 304 of the Labor-Management Relations Act of 1947 is the notion that the minority of union members should not be "coerced" into having a portion of their dues payments used to support political measures or candidates to which or to whom they are opposed.[13] This argument rests in part upon the false premise that "political" matters are somehow foreign to the normal functionings and purposes of labor unions, and that while the minority must abide by majority rule in all other union matters, they should not be under similar constraint in matters "political".

This contention is untenable. In the case of *DeMille* v. *American Federation of Radio Artists* (Supr. Ct., Calif., Dec. 16, 1947, not yet officially reported, cert. den. Apr. 19, 1948), which attracted nationwide attention, the Court re-

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[13] "Mr. TAFT. Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute * * * to the election of someone whom they do not favor?" (*Congr. Rec., Sen.*, June 5, 1947, p. 6598.) (See footnote 5, *supra*: the case at bar does not involve "contributions".)

pudiated this very principle. In that case, the union assessed each of its members one dollar to raise funds in opposition to proposed legislation which it deemed adverse to its interests. Upon DeMille's refusal to pay the assessment on the ground that he personally favored the legislation, he was expelled. The Court, in upholding the union's action, held that a labor organization could legally use its funds to oppose legislation which it deemed harmful:

> "'An unincorporated association, acting in conformity with the will of a majority of its members, has a right to devote its funds to any purpose calculated to promote the objects of the association.'
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> . . . . . .
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> "Dues and assessments paid by members to an association and any severable or individual interest therein ceases upon such payment . . . . As such property they are subject to disbursement and expenditure by the association in pursuit of the lawful object or objects for which they were designed to be expended.
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> . . . . . .
>
> "Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference." (*DeMille* v. *American Federation of Radio Artists, supra.*)

The premise that political activity is foreign to the normal functionings and purposes of labor unions is also refuted by history and by the facts of everyday

union activity.[14] Today, more than at any other time in our history, it is imperative for unions to engage in political activity along with their basic struggle for improved wages, hours and working conditions. Particularly in recent years, our elected representatives have passed enactment after enactment which affects for good or ill the basic purposes for which unions were organized. Laws have been passed concerning minimum wages, maximum hours, child labor, labor's right to organize, the closed shop, the union shop, deadline dates for contract termination, discharge of employees for union activity, health

[14] An excellent exposition of this basic fact is contained in the following passage from *American Labor Unions* (1945 ed.) by Florence PETERSON, Director of Industrial Relations Division, Bureau of Labor Statistics, U. S. Department of Labor (pp. 173-4):

> "Although the traditional policy of American labor has been not to align itself with any political party, organized labor has always been keenly aware of the fundamental fact that its well-being and even its survival is dependent upon governmental action—legislative, judicial, executive. Basing its course of political action on the principle of 'reward your friends and punish your enemies,' organized labor seeks to keep its members informed about the labor record of candidates for office and to urge them to vote for those who give the greatest evidence of being friendly to labor's interests. When federal and state legislation inimical to workers or unions is threatened, or when specific laws are desired, organized labor exercises its rights under a free democratic government to persuade legislators to act favorably to the interests of its members. Individual unions and the federated bodies conduct publicity campaigns for the purpose of bringing pressure on legislators through their constituents back home, and they send representatives to appear before committee hearings in the national and state capitols.
>
> "The regular union periodicals which reach the homes of all union members are naturally an effective means for conveying facts about proposed legislation and opinions on candidates for office. Most of the union journals devote considerable space to discussions of legislative and political affairs as they affect wage earners and organized labor

[Footnote continued on following page.]

and safety in places of employment, picketing, distribution of union leaflets, and unemployment insurance.[15]

To say that labor unions must operate within the framework of such enactments without any right to educate their members as to the benefits or detriments of these laws, to agitate for or against them, or to urge the defeat or re-election of the legislators who passed them, is to ignore political realities and to deprive unions and their members of vital political freedoms. Moreover, the placing of labor organizations in such a political straitjacket will tend to drive them more and more to seek recourse in their economic, as distinguished from their political, remedies.

That political purposes are an inherent and basic part of every labor organization can be shown by an inspection of many union constitutions. The current constitution of

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[Footnote continued from preceding page.]

generally, as well as the particular industries in which their members are employed.

"During the election campaigns many of the union papers, in addition to general discussions of the broad issues at stake, publish each individual candidate's voting or other record on matters pertaining to wage earners and unions. Listings of the candidates are generally under such revealing headings as 'voted right,' 'voted wrong,' 'absent or indifferent.' While some publications go no further than to present the factual history of each candidate's public life, many include specific statements of endorsement or disapproval. For example, the railroad paper *Labor* publishes serial lists of all Congressional candidates who have been endorsed by the chiefs of the standard railroad labor organizations, their judgment being based primarily on the candidates' records with respect to railway legislation, and with studious disregard to political party considerations."

[15] See, for example, U. S. Dept. of Labor, Division of Labor Standards, Bulletin No. 79 (1946), *Federal Labor Laws and Agencies* (72 pages).

the I. A. of M., for example, provides in part as follows (pp. III-IV):

"PLATFORM

"8. To stimulate the political education of the members to understand their political rights and use the ballot intelligently, to the end that the Government may be a government for, of and by the people, and not to be used as a tool to further the ends of combinations of capital for its own aggrandizement.

"9. To urge the membership to vote only for and support candidates who are in favor of this platform and the following political demands: Initiative, Referendum and Recall, National Income Tax Law, National Inheritance Tax Law, National and State Employers' Liability Law; all judges, without exception, to be elected by vote of the people; national law granting pensions for old age or total disability and accident benefits; public ownership of all public utilities; woman suffrage; change of the Constitution of the United States or any country under our jurisdiction which now declares these subjects or questions to be unconstitutional: self-government of cities; abolition of contract system on all public work—city, county, state or national—such work to be done on the day labor plan at union wages."

Political activity of a labor organization is not confined to election time (the purported dividing line prescribed in Section 304), although it is precisely "in connection with elections" that such activity is most potent and effective. Decisions of most labor organizations on political and legislative questions are reached democratically at annual conventions where resolutions are passed concerning such matters. The logical extension of such activity is the support for or opposition to candidates who favor or oppose such specific pieces of legislation.

By what logic, therefore, should majority rule prevail in the former instance and not in the latter? By what logic should union activity in connection with the formulation of a legislative program be legal, and its activity in furthering the cause of candidates who favor its legislative program be made a criminal act with attendant penalties of fine and possible jail sentences?

The presumed vice of union activity "in connection with" a federal election, moreover, cannot be predicated upon advocacy or urging to action as distinguished from education and the dissemination of ideas, for it is well-established that ideas do not lose their constitutional protection because they invite to a course of conduct (*Thomas* v. *Collins, supra*, 323 U. S. 516, 536-7; *Bridges* v. *California, supra*, 314 U. S. 252, 268-9).

In *Thomas* v. *Collins, supra*, this Court held that free trade in ideas includes the opportunity to persuade to action (323 U. S. 516, at p. 537):

> "But the protection . . . extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."

And in *Bridges* v. *California, supra*, it was held that (314 U. S. 252, at pp. 268-9):

> "Since they punish utterances made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at its height.
>
> . . . .

"No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression."

But, finally, Section 304 itself belies the pious lamentations of those of its proponents who profess to "protect" the minority of union members from political "coercion". For under its terms, even if the membership had voted unanimously, in the case at bar, to authorize respondents to publish and circulate the editorial for which they have been indicted, the act of respondents would nevertheless have been indictable. The section conclusively presumes the dissent of the minority, even if they in fact assent.

II.

Section 304 is violative of the Fifth Amendment as a denial of due process.

By its terms Section 304 applies to "every corporation or labor organization". Since labor organizations are unincorporated associations, the ban of the Statute falls upon unions alone as distinguished from all other unincorporated associations. For example, associations such as farmer groups, employer groups, Chambers of Commerce, veterans' groups, and medical groups may therefore make "expenditures in connection with an election" with impunity; labor unions, on the other hand, do so at the peril of a fine and imprisonment of their officers.

To extend the ban of Section 304 to all other types of unincorporated associations would only make the violation of the First Amendment more flagrant. On the other hand, to single out arbitrarily one type of unincorporated association, as the section has done, is an unwarranted

discrimination and a violation of the due process guarantee of the Fifth Amendment. [*Hirabayashi* v. *United States* (1943), 320 U. S. 81, 100; *Nebbia* v. *New York* (1934), 291 U. S. 502, 536; *Hurtado* v. *California* (1884), 110 U. S. 516, 535; *United States* v. *Ballard* (U. S. Dist. Ct. W. D. Ky., 1935), 12 F. Supp. 321, 325-6.]

"It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case." (*Hurtado* v. *California, supra,* 110 U. S. at p. 535.)

"Nothing is more repugnant to the American mind than that, * * * among fellow citizens there should be one law for one individual and a different law for another, relating to the same subject matter * * *." (*United States* v. *Ballard, supra,* 12 F. Supp. at pp. 325-6.)

The gross inequity of the discrimination contained in Section 304 is graphically illustrated by the fact that while the respondents herein are under criminal indictment for endorsing a Congressional candidate in their newspaper, any other unincorporated association with an opposing political point of view, such as a local chamber of commerce, could have bought advertising space opposing this same candidate with impunity.[16]

There is no basis for such a discrimination against labor unions, and as a result of such discrimination an existing

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[16] "Mr. BARKLEY. * * * But suppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper; and advertised for or against some candidate, or the United States Chamber of Commerce did the same thing, or the Automobile Chamber of Commerce did the same. Would they be prohibited * * *.

"Mr. TAFT. Of course, if the Chamber of Commerce were a *corporation*, as I think it is, it would clearly be illegal." (*Congr. Rec., Sen.*, June 5, 1947, p. 6596.) (Emphasis supplied.)

inequality is further aggravated. Corporate groups can and do avoid the so-called "Corrupt Practices Act" through evasion devices, through the substantial personal contributions of their officers and directors, and through their control of the media of communications by reason of ownership and advertising. Such avenues of avoidance are, by comparison, unavailable to labor unions.[17]

We have already shown *supra* that no evidence was adduced in the Congressional committee hearings on the proposed Labor-Management Relations Act of 1947 as to the subject-matter of Section 304, and that one searches in vain through the legislative history of this Act to find a shred of evidence justifying this discriminatory attack

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[17] See documented remarks of Rep. MILLER of California (*Congr. Rec., House*, April 16, 1947, p. 3581):

> "There is no justification for treating labor organizations on the same basis with corporations for this purpose. The $5,000 limitation by the Hatch Act upon individual contributions to political committees has been ineffective as against corporations because its officers, directors, and members of families having controlling interests in these corporations can afford to make large contributions distributed to a large number of State, local, and independent committees. Thus we find that 31 members of the du Pont family contributed $109,832.83 to various political organizations for political purposes. Five members of the McCormick family contributed $28,000; six Mellon family members contributed $59,500 and nine Pew family members made a total contribution of $96,995.76. See appendix 8, Tabulation of Contributions by Prominent Family Groups, Senate Report No. 101, pages 140-151."

See also *House Minority Report No. 245, 80th Cong., 1st Session*, p. 111:

> "Such a restriction upon a voluntary association, a labor organization, composed of individuals of modest means, who by their very association with a labor organization demonstrate their inability to contribute large sums to an election fund, has little or no merit."

For further data on substantial political contributions of industrialists and their families, see *Sen. Rep. No. 47, 77th Cong., 1st Sess.*, and *Sen. Rep. No. 101, App. VIII, 79th Cong., 1st Sess.*

against unions' political "expenditures". We can only conclude that there was and is no basis for such a singling-out of labor organizations other than the motive of the proponents of the Act to silence those groups who most vociferously opposed the Act's passage. This is hardly a constitutional basis for discriminatory legislation.

III.

Section 304 fails to set forth an ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments.

A statute making certain activity criminal must be sufficiently definite and certain to inform clearly those who are subject to its operation concerning the conduct on their part which will render them liable to its penalties. Failure of the law to set forth an ascertainable standard of guilt renders it constitutionally defective. [*Winters* v. *People of the State of New York, supra*, U. S. Sup. Ct., Mar. 29, 1948; *Thomas* v. *Collins, supra*, 323 U. S. 516; *Connally* v. *General Construction Company* (1926), 269 U. S. 385; *United States* v. *Cohen Grocery Co.* (1921), 255 U. S. 81.]

In *Winters* v. *People of the State of New York, supra*,[18] this Court reversed the conviction of a New York book dealer on the ground that the law under which he was convicted did not define the proscribed conduct with appropriate definiteness. In so holding, the Court stated that men of common intelligence cannot be required to guess at the meaning of a criminal enactment:

> "The standard of certainty in statutes punishing for offenses is higher than in those depending pri-

[18] Discussed *supra* under I, D, at pp. 13-14.

> marily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness'. *Cantwell* v. *Connecticut*, 310 U. S. 296; *Pierce* v. *United States*, 314 U. S. 306, 311. There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment."

As a result of the vagueness of the law, said the Court, no one could adequately guard against its penalties:

> "'It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.'"

In *Connally* v. *General Construction Company*, *supra*, 269 U. S. 385, this Court held unconstitutional a statute requiring a contractor, under penalty, to pay his employees "not less than the current rate of *per diem* wages in the locality where the work is performed". The Court, in so holding, stated that the law was not sufficiently explicit to inform contractors what conduct on their part would render them liable to its penalties (269 U. S., at p. 391):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law * * *."

Even higher standards of definiteness and certainty in the language of criminal statutes have been imposed by this Court, where the effect of the statutory vagueness is to restrict the basic freedoms of speech and press. In *Winters* v. *People of the State of New York, supra,* for example, this distinction was pointed out by the Court as follows:

> "This Court goes far to uphold state statutes that deal with offenses, difficult to define, when they are not entwined with limitations on free expression. We have the same attitude toward federal statutes."

Most apropos to the case at bar in this connection is the case of *Thomas* v. *Collins, supra,* 323 U. S. 516, where the statute prohibited union "solicitation" unless the union representative first registered with the Secretary of State. In that case the state sought to sustain the law on the ground that it did not bar the free expression of opinion but barred solicitation only. The difficulty of drawing a line between "solicitation" and mere opinion in that case, is comparable to the difficulty in the case at bar of drawing a line between activity in connection with an election and activity not in connection with an election. The Court in the *Thomas* case held the statute invalid on the ground that it was so beclouded with uncertainty that a union speaker could never be sure, even when he was merely advocating adherence to union philosophy in the abstract, that he was not "soliciting". The Court said in this connection (323 U. S. 516, at p. 535):

> "Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle,

> namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card."

Under the most ordinary standards of "vagueness", therefore, Section 304 should, we submit, be held unconstitutional as failing to prescribe an ascertainable standard of guilt. And, as we have shown, mere "ordinary" standards are not applicable to a statute such as this one, whose purpose and effect are to invade the freedoms of speech and press.

The impossibility of determining what is activity "in connection with" an election has already been demonstrated, and is self-evident in the words themselves.[19] What would constitute a proscribed "expenditure" is similarly tinged with doubt. When the two concepts are conjoined, as they are in Section 304, they create a possible area of criminal conduct so vast and nebulous as to nullify the political activity of labor organizations completely.

The confusion which existed and exists among the very legislators who enacted the Section, as to what activities are prohibited by it, demonstrates the complete injustice of requiring the lay public to know, at its peril, whether or not it is violating the law. Senator Taft has stated

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[19] See footnote 8, *supra*, p. 13.

that union newspapers that are supported by subscriptions from the membership are not covered by Section 304, whereas if they are supported by union dues they are covered. And if a union paper is supported by "earmarked" portions of dues it does not fall under the statutory ban, according to the Senator, provided the paper is "so to speak a going concern". As to the commercial press, Senator Taft excludes it from the operation of the law if its funds are derived from "running the newspaper as a business" and not from "corporate funds"; and he further states that in no event may it put out a pamphlet or a "special" newspaper.[20]

Senator Ball has stated for the press that Section 304 was not intended to interfere with "bona fide" union publications, and that it is only aimed at "excessive" use of union dues for distribution of "extra" editions or "extra" copies of "campaign diatribes" in a particular area against a particular person. He stated further that the Section is effective "only during political campaigns".[21]

Representative Hartley, co-sponsor of the Act, on the other hand, has stated publicly that all union newspapers are free, under Section 304, to editorialize on elections, and that if his interpretation is incorrect he is willing to have the Act amended.[22] Indeed, Senator Taft has recently conceded that Section 304 "might be ambiguous", but for some unexplained reason he is opposed to altering or amending the provision before 1949.[23]

Apart from the ambiguity of the statute on its face, therefore, we submit that the evidence is overwhelming that Section 304 is vague and indefinite and sets forth no

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[20] See debate in *93 Cong. Rec., Sen.*, June 5, 1947, pp. 6593-97. A paraphrase of this debate would be only a futile attempt to depict the multiplicity of vexatious problems raised in the minds of the Senators concerning the operation of Section 304.

[21] *N. Y. Times*, Sept. 7, 1947, p. 5, cols. 5-6.

[22] *N. Y. Herald Tribune*, July 16, 1947, p. 1, col. 3.

[23] *N. Y. Herald Tribune*, Feb. 26, 1948, p. 2, col. 5.

ascertainable standard of guilt. For this reason, we submit this Court should declare it invalid under the Fifth and Sixth Amendments to the Federal Constitution.

Conclusion.

Section 304 is thus an undisguised attempt to silence the voice of labor. With unblushing arrogance, the very legislators who owe their position to the political preferences and activity of the electorate have sought to take away from that electorate their right to remove them from office. Of such stuff tyranny is born.

We say that Congress cannot thus immunize itself from political criticism; that Congress cannot pass a law which threatens the very life of labor and in the same law thrust a gag into labor's mouth to insure that the enactment will never be repealed and that no Congressional careers will be curtailed because of its passage.

A law such as this, which deprives labor of its legitimate political outlets, will moreover drive labor to greater reliance on its economic remedies. Surely this is not a result to be hoped for—but it is made inevitable by the law itself.

We are living in an era of hysteria and repressive legislation. It has been said of the process of democracy that the "pendulum has swung too far in one direction and now it is swinging back". If this is symbolic of democracy, we urge only this: at least let the pendulum continue to swing.

We therefore respectfully submit that this Court should declare Section 304 invalid as an unwarranted and uncon-

stitutional invasion of the freedoms and rights protected by the First, Fifth and Sixth Amendments to the Constitution.

IV.

The determination of the lower Court should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA,
Appellant,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, officer thereof,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

Thurman Arnold
OSMOND K. FRAENKEL,
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Counsel.

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

The American Civil Liberties Union, which is devoted to the furtherance of the civil rights guaranteed by the Constitution of the United States, submits this brief urging that §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act

of 1947, abridges "the freedom of speech" and "of the press" of appellees, which is protected by the First Amendment to the Constitution of the United States and denies to appellees the "due process of law" guaranteed by the Fifth Amendment to the Constitution of the United States.

The Facts

Appellees were indicted under §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act of 1947, providing in pertinent part that "It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election" to Federal office or "in connection with any primary election or political convention or caucus held to select candidates" for such office, and providing penalties for any labor organization violating the section and for any "officer of any labor organization, who consents to any contribution or expenditure by the * * * labor organization" in violation of the section. The section defines a "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The indictment charged in Count I that respondent Congress of Industrial Organizations (herein called the "CIO") was, within the meaning of the statute, a labor organization, of which appellee Philip Murray was an officer, to wit, President; that on July 15, 1947, 1947 a special election, at which a Representative to Congress

was voted for, was held in the Third Congressional District of Maryland; that in anticipation of that election and with intent to violate the statute, the CIO published an issue of its weekly periodical, The CIO News, under date of July 14, 1947, containing an article by appellee Murray urging members of the CIO to vote for a particular candidate "officially approved and endorsed by the CIO Political Action Committee for the State of Maryland", rather than the other candidate, said to be "notorious among the working men and women of Baltimore for his anti-union views and activities"; that the CIO violated the statute by expending out of its funds, in connection with the election, a substantial sum in the composition printing, publication, and distribution of the July 14, 1947 issue of The CIO News, a substantial part of which sum was expended to publish the offending article; that the CIO also expended its funds in printing and causing to be transported to Maryland one thousand extra copies of the July 14, 1947 issue of The CIO News. Count II charged that appellee Murray, in violation of the statute, consented to the aforementioned expenditures.

Appellees moved to dismiss the indictment on the ground that the statute violated the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States. The District Court (Moore, D. J.) granted the motion, on the ground that the statute was "an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly" protected by the First Amendment. The case is before this Court on direct appeal.

POINT I

As applied to appellees the statute violates the First Amendment.

The First Amendment to the Constitution of the United States provides in relevant part: "Congress shall make no law • • • abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." By §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act of 1947, Congress has made a law which has been applied to prohibit the CIO from making the necessary expenditures to print an article in favor of a particular candidate for Federal elective office. Congress has thus, if the statute be valid, not merely abridged but has effectually prohibited the power of speaking and printing which the CIO as an entity previously exercised in favor of certain candidates for Federal elective office and against others.

The argument advanced by the Congress and by the Government to justify this restraint may be summarized as follows: They contend that the entity, which is a labor organization, is composed of a majority and a minority. The majority are thought to have joined for at least two purposes, economic and political, the latter including the making of speeches and printing of articles in favor of particular candidates for federal office. The minority are thought to have joined solely for economic ends, under a greater or lesser degree of economic "coercion", and are opposed to the making of speeches or printing of articles by the group as a whole in favor of candidates approved by the majority. Senator Taft in 93 Cong. Rec. 6437,

6440. They are assumed to be so opposed either because of a detached philosophical aversion to the mixture of economic and political ends in a labor organization or because they estimate that the candidates which will be supported by the majority will, in general, pursue policies with which the minority does not agree. Senate Report No. 101, p. 24. It is claimed that Congress could prevent the expenditure of the minority's money for the making of speeches and the printing of articles in favor of candidates with whom the minority is not in sympathy, by requiring the majority to divorce their economic activities from their political speaking and printing activities, and to form two separate associations for each. Senator Taft in 93 Cong. Rec. 6436-6440.

The character of the restraint upon the speech and press of the majority is plain. The majority wish to make one combination for at least two purposes, economic and political, the latter to include speaking and printing. Congress has declared that the majority may not combine for those two purposes, but must set up a separate organization for each. To the extent that it is more expensive and more burdensome to the majority to speak and print through an organization separate from that through which they desire to speak and print, as well as to act in the economic sphere, there is a restraint on their speech and press.

That restraint is not small. Organization, even of persons with common goals, is not easy or cheap, as the entire history of the American labor movement has demonstrated. The time, effort, and expense necessary for the majority to create and sustain a separate organization for political activities would obviously be substantial.

In assessing the interest of a minority in a labor organization to join a labor group which does not perform activities of speech and press in connection with Federal elections, it is important to determine who constitute the minority which Congress sought to protect. Not all those in a labor organization who may be opposed to the particular candidate supported by the organization are to be included in that minority. Congress has not prohibited persons from joining and contributing to organizations devoted to the support by speech or press of particular candidates, even though a minority may be opposed to the candidate chosen by the majority. Congress has not as yet thought it desirable to outlaw all political organizations or all political parties. It has not as yet supposed that persons may not combine solely for the purpose of making their speech and press effective and may not contribute money to the support of the group even though that money may be expended on behalf of a particular candidate with whose views they do not agree. Congress has, so far, not prohibited an individual from paying that price in return for a voice in the selection of the policies of the group and for the opportunity to make his speech and press effective when it is in agreement with a majority of the group.

Thus the minority in a labor organization which Congress supposed itself to be protecting does not include those who believe in combination with their fellow laborers for the purpose of political speech, even though many of those who have such a belief may be opposed to the particular candidate supported by the labor organization. The minority with which Congress was concerned can include only those who, although for one reason or another they believe in economic combination, do not believe in the

political organization of their fellow workers, either as a matter of theory or because they judge that the candidates which will be supported by the group will be unresponsive to their problems. It is the payment of the money of this group and not of all those opposed to the particular candidate supported by the majority which Congress sought to stop.

This minority are not prohibited from voicing their political views by reason of having joined for economic purposes a group the majority of which advocates contrary views. It is true that the effective presentation of the minority's political thoughts may be lessened to the extent that they desire to organize to express them but are unable to do so because of lack of that proportion of their union dues which have been allocated to the political speech and press activities of their labor organization. But it must also be noted that they have a voice in the labor organization as to which candidate should be supported. As stated by Brandeis, J., in *Whitney* v. *California,* 274 U. S. 357, 375, their "fitting remedy for evil counsels is good ones."

The issue under this point is thus whether Congress may place burdens upon the political speech and press of a majority of those in a labor organization in order to save a minority money which in large part they will not expend for the purpose of speech or press. In this case, the issue is whether a majority of the CIO may print the article complained of in the indictment or must go to the time, expense, and effort to form a new and different organization to print that article, in order that a minority, who have deliberately joined the CIO and who were assuredly aware of the political activities of the CIO at the time they paid their dues, may be absolved from co ribuing to the

expenses of printing an article with which they do not agree.

The issue requires this Court to weigh the extent of the burden on the speech and press of the majority against the gain, both in money, and perhaps in effectiveness of speech; of the minority.

It is not, of course, necessary to urge that in weighing the burden to the speech and press of the majority there should be cast into the scale that diminution of the effectiveness of the majority's speech and press which would result from lack of that proportion of the minority's dues allocated to political speech and press of the organization. But Congress has not made a law prohibiting labor organizations to collect money for political, as opposed to economic, purposes except from those members who consent. Congress has prohibited all collection of money for that purpose by a labor organization and has made it necessary for the majority to form an independent entity to make a political speech in connection with a Federal election. That is a necessity which is an obvious burden on the speech and press of the majority. It does indeed impose on the majority of existing labor organizations a "previous restraint" more burdensome than those stricken down in *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233; *Near* v. *Minnesota*, 283 U. S. 697, and *Lovell* v. *Griffin*, 303 U. S. 444. Further it means that money of the majority already contributed deliberately to aid the organization to make political speech has been banned from such use, thereby making it even more burdensome for existing majorities of unions to speak than those which may arise in the future.

The gain to the minority is of lesser moment. To the extent that the minority's money, which is saved by allow-

ing the organization to pursue only economic ends, is not expended for speech or press, it cannot be entitled to equal weight with the additional money needed to be expended by the majority in creating and sustaining a separate organization to make political speeches. The First Amendment has given a preferred position to the rights therein guaranteed. *Thomas* v. *Collins*, 323 U. S. 516. "The circulation of information to which the public is entitled" may not be limited on solely economic grounds. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233. Freedom of speech and press are "fundamental personal rights and liberties". *Schneider* v. *New Jersey*, 308 U. S. 147, 161. See also *Thornhill* v. *Alabama*, 310 U. S. 88, 101, 102; *Bridges* v. *California*, 314 U. S. [redacted], 262-3.

It is hardly to be assumed that all of the minority's saving will be expended on speech and press and for that reason it cannot be assumed that the effectiveness of the political voice of the minority is reduced because a part of their dues goes to sustain a contrary voice, in the same proportion as the effectiveness of the voice of the majority would be curtailed by a requirement that it create a separate organization to speak.

It must therefore be concluded that the interest of the majority in the CIO to avoid the burden placed upon it by the statute as a condition of printing the article in question outweighs any interest which the Government can assert on behalf of a minority in the CIO to save the amounts of their dues which have been allocated to the expenses of printing and publishing that article. The statute, as applied, must accordingly be held to be in conflict with the First Amendment.

POINT II

On its face the statute violates the First Amendment and is fatally indefinite in violation of the Fifth Amendment.

Even if we assume *arguendo* that Congress could prevent a labor organization from expending its funds to print or speak in favor of a candidate so as to protect a minority from having their money expended to facilitate that speech and press, the law which Congress has passed on its face violates the First Amendment. The law prohibits every labor organization even if all its members consider it desirable to combine to speak and print on behalf of political candidates, from such speaking and printing. It is not and cannot be urged that an organization in which all members are agreed may validly be barred from combining for both economic and political speech making activities.

Even on the assumption that the CIO contains a minority who do not wish to combine for political purposes, respondents may raise the objection that because the statute prohibits by its terms activities of others obviously protected by the First Amendment it is invalid on its face.

The reason that a person who has performed acts which might have been validly prohibited by a narrowly drawn statute may yet challenge the statute under which he is indicted because its terms permit the indictment of persons whose activities are protected by the First Amendment, is that the mere fact that the law remains on the books has a tendency to prevent persons from making such speeches and printing such articles as they have a right to do. The interest of society in encouraging such

speech and print is of such great moment that any person to whom the law is applied may attack its basic validity.

Thus the Court has time and again stricken down statutes "on their face" as violating the First Amendment without considering whether they have been invalidly applied. *Lovell* v. *Griffin*, 303 U. S. 444, 451; *DeYonge* v. *Oregon*, 299 U. S. 353, 364, 365; *Schneider* v. *New Jersey*, 308 U. S. 147, 162; *Thornhill* v. *Alabama*, 310 U. S. 88, 105. As stated in the last cited case the statute must be "narrowly drawn to cover the precise situation" to which the law may be validly applied. 310 U. S. at 105.

So in this case the CIO is entitled to assert the interest of those labor organizations all of whose members are in agreement to combine for political purposes. As applied to such organizations, and there is no doubt that the law does so apply, it is plainly invalid because they have no minority whose interest Congress can seek to protect. Under the decisions of this Court the law is thus invalid on its face under the First Amendment.

Further the statute violates the due process clause of the Fifth Amendment in that its terms are too vague and indefinite. The terms "in connection with any election" and "expenditures" are obviously uncertain in content, as the legislative history of the statute shows. 93 Cong. Rec. 6593-6595, 6604.

At least one purpose of requiring a statute to be precisely drawn in order to comply with the Fifth Amendment is so that its presence on the books may not have the effect of prohibiting conduct which the Courts hold is permissible under the statute itself. *Connally* v. *General Construction Co.*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Cohen Grocery*, 255 U. S. 81.

Only if the statute is sufficiently clear so as not to cause a substantial class of persons to refrain from activities which the statute was not intended to prohibit can it be held valid, even though there may be "cases very near each other on opposite sides" of the precise line of illegality so that no one can come near to that line "without knowing that he does so, if he thinks." *United States* v. *Worzbach*, 280 U. S. 396, 399.

A determination of the validity of a statute when attacked as invalid under the Fifth Amendment because too vague requires an estimate of at least three considerations, the desirability of the conduct which the statute is intended to ban, the social value of the conduct which the presence of the statute on the books has the unintended effect of prohibiting, and the semantic difficulties of drawing a more definite law. For reasons above detailed if we assume *arguendo* that there is any desirability in prohibiting labor organizations from speaking and printing in favor of particular candidates for Federal elective office, that desirability is, to say the most, meager. On the other hand the language of the statute is naturally and reasonably construed on its face as prohibiting all speech on political matters relating to Federal elections, even though it is not speech in favor of one candidate, and as prohibiting even the sale to a third person of a union newspaper containing an article in favor of one candidate. The legislative history shows that it was not intended that such speech and print be banned. 93 Cong. Rec. 6436-6440. But the words of the statute appear to be applicable.

Not every citizen has the Congressional Record at hand. The inevitable tendency of the terms of the statute will be to restrain activities which the statute did not intend, and those activities are, to say the least, obviously vitally

important to the workings of a democracy. Cf. *Winters* v. *People of New York*, decided by this Court March 29, 1948.

The difficulty of framing a statute to cover those instances which Congress intended to cover is not great, certainly not insurmountable. On considering the conduct intended to be banned and that which is unintentionally restrained, it must therefore be concluded that the statute is too indefinite to withstand the test of due process under the Fifth Amendment.

The judgment should be affirmed.

Respectfully submitted,

American Civil Liberties Union,
Amicus Curiae.

Osmond K. Fraenkel,
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Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

THE UNITED STATES OF AMERICA, *Appellant*

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, *Officer Thereof*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF OF AMERICAN VETERANS COMMITTEE (AVC), *Amicus Curiae*

ROBERT L. CARTER,
E. LEWIS FERRELL,
IRVING R. M. PANZER,
Attorneys for the American Veterans Committee, Amicus Curiae.

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Freedom to think, speak, write, to laud or criticize the conduct of governmental officials, and to campaign for or against particular political candidates by speaking and writing to that end in an effort to influence the voting public to one's point of view have long been deeply rooted in our democratic heritage. Section 313 of the Federal Corrupt Practices Act as amended by Section 304 of the Labor Management Relations Act of 1947 (Public Law 101, 80th Congress, 1st sess., c. 120) has cast a shadow of illegitimacy over such activity. Determination of its constitutionality is of transcendental importance to the American people as a whole since decision on this question will vitally affect the course which our democratic institutions will take for some time to come.

The Interest of the American Veterans Committee (AVC)

The American Veterans Committee (AVC) is a New York membership corporation composed of veterans of World War II associated together to pursue more effectively the democratic objectives for which the recent war was fought. One of the basic purposes for which AVC was founded is "to preserve the Constitution of the United States; to insure the rights of free speech, free press, free worship, free assembly and free elections." (Preamble, National Constitution adopted at First National AVC Convention, Des Moines, Iowa, June, 1946.)

The American Veterans Committee is a non-partisan organization, and its constitution and national by-laws specifically prohibit its national office, territorial units, and officials from participating in partisan politics and from using organizational funds in support of any political candidate. It is the composite belief of its membership, however, that the interest and activity of the mass of people in politics should be encouraged since this adds strength, stability, and vigor to popular government. AVC considers exercise of the franchise, therefore, not only a fundamental right but the mandatory duty of every eligible American citizen.

Freedom of speech and of the press are the indispensable attributes of democratic government. Whenever any governmental restraint upon the exercise of these freedoms is imposed, therefore, the necessity for the restriction in the light of a clear and present danger must be affirmatively and conclusively demonstrated. AVC believes free speech in the political arena to be of fundamental importance to the preservation of representative government. Consequently when a restraint is imposed in that area, as in the case at bar, the high wall which such legislation must ordinarily hurdle to be sustained ought to be even more difficult for it to scale.

Not only has the Government failed to show the neces-

sity for the legislation in the light of the aforementioned standards as applied to this case, but the statute is so vague and covers such a reach of activity by corporations and labor unions alike that it does not meet even ordinary standards of definiteness. Read literally, for example, it seems to apply even to educational get-out-the-vote campaigns, not in support of any party or candidate, but conducted on a non-partisan basis. AVC is planning such a campaign this summer and fall in connection with the forthcoming national elections. Conceivably such activity might be condemned under this statute. AVC, therefore, aside from its concern for the maintenance of free speech generally, has a personal interest in this Court's decision as to whether Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947 is a legitimate exercise of Congressional power.

In our opinion the statute presents a grave threat to freedom of speech and press secured against Congressional invasion by the express provisions of the First Amendment. Moreover, it endangers our political freedom and even our whole concept of popular government. For the foregoing reasons AVC files this brief as amicus curiae.

STATEMENT OF THE CASE

This case is here on direct appeal from the United States District Court of the United States for the District of Columbia pursuant to *Act of March 2, 1907, 34 Stat. 1246,* as amended by *Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V. 682* and by *Sec. 238 of the Judicial Code (28 U.S.C. 345).* Appellees, the Congress of Industrial Organizations (CIO) and Philip Murray, its President, are charged by the Government with violation of Sec. 313 of the Federal Corrupt Practices Act, as amended by Sec. 304 of the Labor Management Relations Act of 1947.

In brief the facts are these: On July 15, 1947, a special election was held in the Third Congressional District of the

State of Maryland to elect its representative to Congress. Just prior to this election, Philip Murray wrote an article favoring one of the candidates and opposing the other, charging the non-favored candidate with being anti-union and urging all CIO members in the district to vote for Edward D. Garmatz, the favored candidate. This article appeared as an editorial in the "CIO News," the official CIO publication. One thousand extra copies of the periodical containing Murray's article were printed and distributed through the district by the CIO. The indictment here involved followed.

On February 20, 1948, appellees filed a motion to dismiss in the Court below, and on March 15, 1948, this motion was granted. Whereupon the Government prosecuted this appeal.

ARGUMENT

The Statute Violates Rights Guaranteed by the First Amendment to the Federal Constitution.

Pursuant to its power to control federal elections and to keep them open and free of corruption, Congress under Sec. 304 of the Labor Management Relations Act of 1947 has made it unlawful for a corporation or labor union to make any contribution or expenditure in connection with nomination or election of members of the Senate or Congress, or the President or Vice President of the United States. We do not question the use of governmental power to keep elections free of corruption and to protect them from being controlled or dominated by corporations, labor unions, or other powerful interests. In fact, we believe Congress is under obligation to regulate the conduct of federal elections so as to make reasonably certain that they are representative of the will of the people. Large contributions to a political candidate or party represent a danger because donors are liable to win commitments in payment for their help which may be adverse to the public welfare.

Sec. 313 of the Federal Corrupt Practices Act as originally enacted *(Act of Feb. 28, 1925, c. 368, 43 Stat. 1047, Title III)* prohibited corporations from making any contributions in connection with a federal election. In 1943 the War Labor Disputes Act, Sec. 9 thereof, made it unlawful during the war emergency for any person to contribute more than $5,000 to any political candidate or political committee in connection with federal elections. By definition a "person" included associations, organizations, and groups and hence covered labor unions.

Here, however, a very different problem is presented. Sec. 304 of the Labor Management Relations Act of 1947 does not merely propose to prohibit corporations or labor unions from financing political campaigns but effectively prevents their active participation in any federal election and in some instances in any election whatsoever. Expenditures as well as contributions are now prohibited. The broad reach of this statute makes every activity by a corporation or labor union in the political arena questionable. It would appear that a labor union could not hire a hall and urge its audience to vote for a particular candidate as a friend of labor. Nor, it would seem, may a corporation or labor union use funds to have published and distributed without editorial comment the voting records of the various candidates for office without becoming subject to prosecution under this statute. All speech and writing and other activity under the auspices of a corporation or labor union are proscribed when the speaking, writing, or activity is in connection with the election of a federal officer. Yet such activities do not corrupt elections. On the contrary, information and comment concerning the record of office seekers help the public make up its mind as to which candidate offers the best promise of good service.

Freedom of speech and of the press are considered the most precious and cherished freedoms of our society, the sine qua non of our way of life. *Palko* v. *Connecticut*, 302 U. S. 319, 327; *Thomas* v. *Collins*, 323 U. S. 516. To over-

come the prohibition against interference with these freedoms contained in the First Amendment to the Federal Constitution and now, by incorporation, a part of the 14th, is the most difficult burden known to our laws. Legislatures, therefore, when any restraint upon the exercise of free speech is proposed, seek to draw strength from some recognized or conceded power of great public importance to overcome this burden—to prevent outbreaks of violence in a labor dispute, *Thornhill* v. *Alabama*, 310 U. S. 88; to maintain peace and order in the community, *Cantwell* v. *Connecticut*, 310 U. S. 296; to keep the streets and public thoroughfares open and free of obstruction, *Cox* v. *New Hampshire*, 312 U. S. 569; *Hague* v. *CIO*, 307 U. S. 496; to obtain revenue to finance state functions, see *Murdock* v. *Pennsylvania*, 319 U. S. 105; to prevent trespass of private property, *Marsh* v. *Alabama*, 326 U. S. 501; to protect the state in the emergency of war, *Schenck* v. *United States*, 249 U. S. 47; and in exercise of a state's right of self-preservation, *Gitlow* v. *New York*, 268 U. S. 652; *Herndon* v. *Lowry*, 301 U. S. 242. Danger to these freedoms, then, lies not in a direct onslaught by governmental authority but in a flanking attack incidental to the proper performance of some appropriate or essential state activity. To prevent governmental encroachment on free speech and a free press without impairing the government's authority to function effectively is undoubtedly a difficult problem. But this Court has laid down certain basic principles which we believe to be applicable here.

Generally courts will not interfere with legislative judgment as long as there exists some rational connection between the evil to be curbed and the remedy imposed. See *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381. Where the legislature is attempting a reasonable experiment in an effort to solve the complex economic and social problems of our times, this Court feels that the appropriate place to seek redress against the legislature's lack of vision is at the polls and not in the courts.

When a statute impinges upon the exercise of freedom of speech and of the press, however, the fact that the legislation has a rational basis will not alone suffice to sustain its constitutionality. *Thomas* v. *Collins*, supra. Rather this Court will make a... independent examination of the facts involved and must itself be satisfied as to the necessity for the restraint imposed. *Lowell* v. *Griffin*, 303 U. S. 444; *Thornhill* v. *Alabama*, supra; *Schneider* v. *State*, 308 U. S. 147; *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624. This approach is all the more proper because of the leeway granted to the legislature in other fields. In that frame of reference freedom to speak and write become in truth indispensable to democratic government.

If the right to seek redress at the polls is to be meaningful, the channels of free speech must remain open so that the public can keep informed concerning the conduct of elected public officials. If freedom to disseminate information about those seeking public office ceases to exist, the electorate, unable in the main to have any personal contact with or accurate knowledge of the various candidates, could not form an intelligent standard upon which to base the final selection. In this case the Congress has made it unlawful for a corporation or labor union and their officials to make an expenditure necessary to circulate information about various candidates for office in an impending primary or general election. Congress has placed a barrier to free speech in the very area to which those channels must remain open if we are to secure to the people a government responsive to their will. It is more important now than ever, therefore, that this Court carefully scrutinize the statute here involved and strike it down unless overwhelming and pressing reasons for its enactment are shown.

In its effort to give life and substance to the rights which the First Amendment protects, the Court has mapped out several complimentary criteria, only two of which are pertinent to this discussion. Any restriction on free speech must be justified by a clear and present danger of a sub-

stantive evil which the state has a right to prevent. *Thomas* v. *Collins*, supra. And even where danger is found sufficient to warrant the limitation, the statute imposing the restriction must be narrowly drawn to meet the supposed evil. *Cantwell* v. *Connecticut*, supra; *Thornhill* v. *Alabama*, supra, and see *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies Inc.*, 312 U. S. 287. In this field, therefore, the activity regulated or prohibited — the substantive evil — must be so clearly and specifically defined as to render application of the statute to any other activity unlikely.

Here the statute fails to meet either test. The apparent substantive evil involved is to keep elections pure and free from domination through the money and power of corporations and labor unions. This is an evil with which Congress has a right to deal.

The statute, however, cannot be justified under the clear and present danger test. The fact that labor unions have entered the political arena and are actively and openly engaged in attempts to elect to office candidates favorable to labor's cause poses no grave or imminent threat to our system. In fact, one of the chief assets of a democratic form of government is its ability to peacefully accommodate various and sundry pressure groups in the interest of the public at large. Labor has a right certainly within our framework to persuade the public that the candidate it endorses is the best man for office. As was said in Thomas v. Collins, supra at page 537, " 'Free trade in ideas' means free trade in the opportunity to persuade to action not merely to describe facts. . . . Indeed, the whole history of the problem shows it is to the end of preserving the right to urge it that the protections are given." This Congress has determined that labor and corporate freedom to persuade to action in the political arena constitutes an evil which must be suppressed. We think the Congress has turned its back upon the basic teachings of our history. Only if the people have the knowledge can they make a free and intelligent decision essential to the democratic process.

On the other hand, even if a clear and present danger is found to be present, the statute, we submit, is too broad and loosely drawn to meet the test of constitutionality. The statute apparently covers any and all expenditures by corporations or labor unions in connection with federal elections. There are no qualifying provisions. By its terms all corporations and labor unions are affected even, as pointed out earlier in the brief, an organization such as ours which merely undertakes to present unbiased facts to the public in connection with the impending national election. Section 304 goes far beyond an attempt to keep federal elections free of corruption. It condemns innocent activity as well as that which might be reasonably expected to lead to the corruption or domination with which the legislation evidently was intended to deal.

It is urged that one of the evils which Congress sought to remedy was the use of union funds to further a particular political candidacy even though a portion of the union membership being of a different political persuasion might be opposed to such expenditure. The statute does much more than that, however. As was pointed out in the opinion of the court below, "The provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections." (R. 17).

Nor under the statute can a group of citizens organize and incorporate for the express purpose of keeping the public informed on a non-partisan basis concerning the records and activities of candidates for office without violating the provisions of the statute, even though every member of the corporation signed a statement to the effect that such activity has his specific and whole-hearted approbation. It is no answer to say that the individual members of the union or corporation are in no way prohibited from engaging in independent political activity as private individuals. The

most effective way, and indeed the only practical way, the average person can influence an election or campaign is through associating with like-minded individuals and by working with them to elect or defeat a particular candidate for office. If the Congress can proscribe the freedom of speech of the corporate entity or labor union in connection with a political campaign, it can certainly reach unincorporated association and ultimately all group activity.

In short, if Congress can take this step the way is open for it to effectively curtail the participation of the ordinary individual in governmental affairs, and that is the very thing which the First Amendment was designed to prevent. Conceding, as we must, that Congress has the right and duty to maintain the purity of federal elections, this statute is so broad, all inclusive and far reaching as to constitute a graver peril than the supposed evils which it attempts to correct. Under the standards laid down by this Court the legislation here involved must fall as violative of the express prohibition of the First Amendment.

CONCLUSION

If the right of free speech is to have vitality, it must not be cut off at the very point where its exercise is most meaningful. Congress can certainly adequately protect the election process against corruption and keep it out of the control of powerful interests without sacrifice of one of the most vital freedoms in our society.

It is respectfully submitted, therefore, that the judgment of the court below should be affirmed:

AMERICAN VETERANS COMMITTEE,
Amicus Curiae;
ROBERT L. CARTER,
E. LEWIS FERRELL,
IRVING B. M. PANZER,
Attorneys for the American Veterans Committee,
Amicus Curiae.

April 22, 1948
Washington, D. C.

SUPREME COURT OF THE UNITED STATES

No. 695.—October Term, 1947.

The United States of America, Appellant, v. Congress of Industrial Organizations, Philip Murray, Officer Thereof.	On Appeal from the District Court of the United States for the District of Columbia.

[June 21, 1948.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal presents a problem as to the constitutionality of § 313 of the Federal Corrupt Practices Act of 1925, as amended by § 304 of the Labor Management Act of 1947. Section 313 of the Federal Corrupt Practices Act now reads as stated in the margin.[1]

[1] § 304, Labor Management Relations Act, 1947, — Stat. —, enacted June 23, 1947:

"'Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution *or expenditure* in connection with any election to any political office, *or in connection with any primary election or political convention or caucus held to select candidates for any political office*, or for any corporation whatever, or any labor organization to make a contribution *or expenditure* in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, *or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices*, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution *or expenditure* in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution *or expenditure* by the corporation or labor organization, as the case

An indictment was returned at the January 1948 term in the District Court of the United States for the District of Columbia on two counts charging in count I the Congress of Industrial Organizations and in count II its President, Philip Murray, with violation of § 313 of the Federal Corrupt Practices Act because of the publication and distribution in the District of Columbia of an issue, Vol. 10, No. 28, under date of July 14, 1947, of "The CIO News," a weekly periodical owned and published by the CIO at the expense and from the funds of the CIO and with the consent of its President, Mr. Murray. The number of "The CIO News" in question carried upon its front page a statement by Mr. Murray as President of the CIO, urging all members of the CIO to vote for Judge Ed Garmatz, then a candidate for Congress in Maryland at a special election to be held July 15, 1947. The statement said it was made despite § 313 in the belief that the section was unconstitutional because it abridged rights of free speech, free press and free assemblage, guaranteed by the Bill of Rights.

The defendants moved to dismiss the indictment on the ground that § 313 as construed and applied and upon its face abridged as to the CIO and its members and Mr. Murray freedom of speech, press and assembly and the right to petition the government for a redress of grievances in violation of the Constitution; that the classification of labor organizations was arbitrary and the provisions vague in contravention of the Bill of Rights; and

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may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" *means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.*"

The additions of 1947 are italicized.

that the terms of the section were an invasion of the rights of defendants, protected by the Ninth and Tenth Amendments. The District Court sustained the motion to dismiss on the ground that as "no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation" the asserted abridgment of the freedoms of the First Amendment was unjustified.[2] — F. Supp. —. In the order granting the motion to dismiss, the District Court defined its ruling as follows:

> ". . . that that portion of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act; 1947, which prohibits expenditures by any labor organization in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, is unconstitutional."

We accepted jurisdiction of the Government's appeal under the Criminal Appeals Act. 18 U. S. C. § 682. — U. S. —.

The briefs and arguments submitted to us support and attack the constitutionality of § 313 of the Federal Corrupt Practices Act on its face—at least so far as unconstitutionality is declared in the above order. We do not admit any duty in this Court to pass upon such a contention on an appeal under the Criminal Appeals Act except in cases of logical necessity. *United States* v. *Petrillo*, 332 U. S. 1. Although the case turned below on the con-

[2] *Thornhill* v. *Alabama*, 310 U. S. 88; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, and *Thomas* v. *Collins*, 323 U. S. 516, were cited.

stitutionality of the provision, the Criminal Appeals Act does not require us to pass upon the constitutionality of a federal statute where the indictment does not state an offense under its terms. *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 88, 97. Compare *United States* v. *Carbone*, 327 U. S. 633. Our first obligation is to decide whether the indictment states an offense under § 313. As we hereafter conclude that this indictment does not charge acts embraced within its scope, this opinion is limited to that issue.

Indictment.—The presently essential parts of the indictment are set out in the margin.[3] It will be noted that paragraph (3) does not allege the source of the CIO funds. The paragraph indicates on its face that "The CIO News" was a regularly published weekly periodical

[3] "(3) That at all the times hereinafter mentioned, the said defendant CIO owned, composed, edited, and published a weekly periodical known as 'The CIO News', and the said defendant CIO paid all of the costs and made all of the expenditures necessary and incidental to the publication and distribution of said periodical, 'The CIO News', from the funds of the said defendant CIO, including the salaries of the editors and contributors and other writers of texts set forth in said periodical including also the cost of the printing of the said periodical and the cost of the distribution of the said periodical, and all such payments and expenditures, including those representing the cost and distribution of the issue of said "The CIO News" under date of July 14, 1947, and designated as Volume 10, No. 28, were made by said defendant CIO at Washington, in the District of Columbia, and within the jurisdiction of this Court."

(6) "(b) That the defendant CIO also caused one thousand copies of the issue of the publication, 'The CIO News', dated July 14, 1947, and designated as the issue known as Volume 10, No. 28, to be specially moved and transported from Washington, District of Columbia, into the Third Congressional District of the State of Maryland, by mailing the said one thousand extra copies to the Regional CIO Director at Baltimore, Maryland, and caused the funds of the said defendant CIO to be expended in printing, packaging and transportation of said extra copies of the periodical, 'The CIO News', in connection with the aforesaid special election."

of which the challenged issue was Vol. 10, No. 28. The funds used may have been obtained from subscriptions of its readers or from portions of CIO membership dues, directly allocated by the members to pay for the "News," or from other general or special receipts.

We do not read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies of "The CIO News," as members of the union. The indictment, count I, paragraph (3), charged the CIO with making expenditures from its funds for "the cost of distribution" of the paper, in paragraph (6) (a), with paying approximately $100 for postal charges for the challenged issue and "causing said article to be distributed in the Third Congressional District of the State of Maryland and elsewhere in connection with the special election held in that Congressional District on the fifteenth day of July 1947." In paragraph (6) (b) there are allegations about certain extra copies. These are set out in the marginal note 3 *supra*. The extras we assume were published pursuant to the order of Mr. Murray in the article.[4] We conclude that the indictment charges nothing more as to the extras than that extra copies of the "News" were published for distribution and were distributed in regular course to members or purchasers and that no allegation has been made of expenditures for "free" distribution of the paper to those not regularly entitled to receive it.

Scope of Section 313.—The construction of this section as applied to this indictment turns on the range of the

[4] The direction was in this form: "I therefore have directed and requested the editor of the CIO News to publish this statement, including the following paragraphs; and to give to this issue of the CIO News proper circulation among the members of CIO unions in the City of Baltimore and, particularly, within the Congressional District in which this election is scheduled to take place."

word "expenditure," added to the section by § 304 of the Labor Management Act of 1947, as indicated in note 1, *supra*. "Expenditure" as here used is not a word of art. It has no definitely defined meaning and the applicability of the word to prohibition of particular acts must be determined from the circumstances surrounding its employment. The reach of its meaning raised questions during Congressional consideration of the bill when it contained the present text of the section. Did it cover comments upon political personages and events in a corporately owned newspaper? 93 Cong. Rec. 6438. Could unincorporated trade associations make expenditures? *Id.*, 6439. Could a union-owned radio station give time for a political speech? *Id.*, 6439. What of comments by a radio commentator? *Id.*, 6439. Is it an expenditure only when A is running against B or is free, favorable publicity for prospective candidates illegal? *Id.* 6440. What of corporately owned religious papers supporting a candidate on moral grounds? The Anti-Saloon League? *Id.*, 6440.

The purpose of Congress is a dominant factor in determining meaning.[5] There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments.[6] Nor, where doubt exists, should we disregard informed congressional discussion.[7]

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[5] *United States* v. *Kirby*, 7 Wall. 482, 486–87; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211; *Fort Smith & Western R. Co.* v. *Mills*, 253 U. S. 206, 209; *United States* v. *Katz*, 271 U. S. 354, 359; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 485; *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 391, n. 4; *United States* v. *American Trucking Assn.*, 310 U. S. 534, 544.

[6] *Burnet* v. *Harmel*, 287 U. S. 103, 108; *Boston Sand Co.* v. *United States*, 278 U. S. 41.

[7] *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479.

Section 304 of the Labor Management Relations Act of 1947 is not a section without a history. Its earliest legislative antecedent was the Act of January 26, 1907, which provided:

> "That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator. . . ." 34 Stat. 864–65.

This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution.[8] Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders.[9]

The next important legislation was The Federal Corrupt Practices Act, 1925. This statute was the legislative response to the decision of this Court in *Newberry* v. *United States*, 256 U. S. 232. Cf. *United States* v. *Classic*, 313 U. S. 299. The *Newberry* case held that federal limitation upon expenditures by candidates was uncon-

[8] See 40 Cong. Rec. 96; 41 Cong. Rec. 22.

[9] See Hearings before the House Committee on the Election of the President, 59th Cong., 1st Sess. 76 (1906); 40 Cong. Rec. 96.

In 1909 the Criminal Code of the United States, which codified, revised and amended the penal laws of the country, was passed. 35 Stat. 1088. The Act of 1907 was reenacted as § 83. 35 Stat. 1103.

stitutional as applied to expenditures made in the course of a primary election for the Senate.[10] While that case did not directly concern itself with the Act of 1907, it was widely construed to have invalidated all federal corrupt practices legislation relating to nominations. Therefore, the 1925 Act reenacted the earlier prohibitions against corporate contributions for political purposes with two significant changes. The phrase "money contribution" of 1907 was changed to read "contribution,"[11] and primaries and conventions were expressly excluded from the scope of the legislation.[12]

The statute immediately preceding § 304 in time was the War Labor Disputes Act of 1943.[13] This Act extended, for the duration of the war,[14] the prohibitions of the Act of 1925 to labor organizations. Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence

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[10] 36 Stat. 822, as amended by 37 Stat. 25.

[11] 43 Stat. 1074. "Contribution" was defined to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution." 43 Stat. 1071.

[12] 43 Stat. 1070.

[13] 57 Stat. 167. "It is unlawful for any . . . labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section."

[14] 57 Stat. 168. "Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective."

which labor unions exercised over elections through monetary expenditures should be minimized,[15] and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose.[16]

When Congress began to consider the Labor Management Act of 1947 it had as a guide the 1944 presidential election, an election which had been conducted under the above amendment to the Act of 1925. In analyzing the experience of that election, a serious defect was found in the wording of the Act of 1925. The difficulty was that the word "contribution" was read narrowly by various special congressional committees investigating the 1944 and 1946 campaigns.[17] The concept of "contribution" was thought to be confined to direct gifts or direct payments.[18] Since it was obvious that the statute as construed could easily be circumvented through indirect contributions, § 304 extended the prohibition of § 313 to "expenditures."[19]

The Labor Management Relations Act of 1947 was the subject of extensive debates in Congress. Embracing as it did a number of controversial issues, the discussion necessarily covered a wide range. It is not surprising, therefore, to find congressional explanation of the in-

[15] See Hearings before a Subcommittee of the Committee on Labor on H. R. 804, and H. R. 1483, 78th Cong., 1st Sess. 2, 4; S. Rep. No. 101, 79th Cong., 1st Sess. 24.

[16] See Hearings on H. R. 804 and H. R. 1483, *supra*, n. 15, 117–18, 133; 89 Cong. Rec. 5334, 5792; 93 Cong. Rec. 6440.

[17] See H. R. Rep. No. 2093, 78th Cong., 2d Sess. 11; S. Rep. No. 101, *supra*, n. 15, 57–59; H. R. Rep. No. 2739, 79th Cong., 2d Sess. 39–40; S. Rep. No. 1, Part 2, 80th Cong., 1st Sess. 37, 38–39.

[18] See note 17, *supra*.

[19] This point was repeatedly emphasized in the Senate debates. See 93 Cong. Rec. 6436–39.

tended scope of the specific provision of § 304, in issue here, scanty and indecisive. We find, however, in the Senate debates definite indication that Congress did not intend to include within the coverage of the section as an expenditure the costs of the publication described in the indictment. As we have stated above, there are numerous suppositional instances of acts by corporations or unions that approach the border line of the expenditures that are declared unlawful by § 313 of the Corrupt Practices Act. As we are dealing on this appeal with the scope of § 313 as applied to an indictment that charges certain allegedly illegal acts, we propose to confine our examination of legislative history to the statements that tend to show whether the congressional purpose was to forbid the challenged publication. For example, Senator Taft, the Chairman of the Committee on Labor and Public Welfare, and one of the conferees for the Senate, answered inquiries as follows; (93 Cong. Rec. 6437, 6438, 6440):

"Mr. BARKLEY. Suppose the particular publication referred to by the Senator from Florida is published and paid for by subscriptions paid to the publication by the membership of that railway labor organization?

"Mr. TAFT. That will be perfectly lawful. That is the way it should be done.

"Mr. BARKLEY. And suppose it is not paid for by union funds collected from the various labor unions?

"Mr. TAFT. That will be perfectly proper.

"Mr. BARKLEY. The Senator from Ohio referred to the law prohibiting the making of direct or indirect contributions by corporations as a justification for making the same provision in the case of labor

unions. Let us consider the publication of a corporation which, day after day, takes a position against one candidate and in favor of another candidate, and does so in its editorials. The editorials occupy space in that newspaper or publication, and the space costs a certain amount of money. Is that a direct or an indirect contribution to a campaign; and if it is neither, what is it?

"Mr. TAFT. I would say that is the operation of the newspaper itself.

"Mr. BARKLEY. That is true; it is the operation of the newspaper. But I gathered the impression that in referring to the present law prohibiting the making of contributions, directly or indirectly by corporations, the Senator inferred that if a corporation publishes a newspaper—as most of them do—and uses the editorials in that publication in advocacy of or opposition to any candidate, at least that is a direct contribution to the campaign. It could not be anything else.

"Mr. TAFT. I do not think it is either a direct or an indirect contribution. I do not think it is an expenditure of the sort prohibited, because it seems to me it is simply the ordinary operation of the particular corporation's business.

"Mr. BARKLEY. Mr. President, let me ask the Senator this question: Let us suppose a labor organization publishes a newspaper for the information and benefit of its members, and let us suppose that it is published regularly, whether daily or weekly or monthly, and is paid for from a fund created by the payment of dues into the organization it represents. Let us assume that the newspaper is not sold on the streets, and let us assume further that a

certain subscription by the month or by the year is not charged for the newspaper. Does the Senator from Ohio advise us that under this measure such a newspaper could not take an editorial position with respect to any candidate for public office without violating this measure?

"Mr. TAFT. If it is supported by union funds, I do not think it could. If the newspaper is prepared and distributed and circulated by means of the expenditure of union funds, then how could a line be drawn between that and political literature or pamphlets or publications of that nature? It is perfectly easy for a labor union to publish lawfully a bona fide newspaper and to charge subscriptions for that newspaper, either by itself or as a corporation.

"Mr. BALL. In the case of most union papers, as I understand, the subscriptions from the union members are collected along with the dues, but they are an earmarked portion of the dues which the union collects and remits to the paper in the form of subscriptions. I take it that would be in a different category from the case where the union makes a blanket subscription and an appropriation out of union dues.

"Mr. TAFT. I think if the paper is, so to speak, a going concern, it can take whatever position it wants to.

"Mr. MAGNUSON. Teamsters' unions publish newspapers dealing with matters in which such unions are interested. The same is true of many other unions. If the pending measure becomes a law, from now on such unions will be prohibited from advo-

cating in their newspapers the support of any political candidates.

"Mr. TAFT. That is correct, unless they sell the papers they publish to their members, if the members desire to buy them. In such a case there would be no expenditure for such a purpose of union funds.

"Mr. MAGNUSON. Mr. President, if the Senator will yield, let me ask him another question. All the funds of labor unions come from dues paid by their members. All the activities of the unions are based upon expenditure of funds provided by dues. That money is in the union's treasury. If the pending bill should become law it would mean that all labor organs which are now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, mentioning his name, or endorsing him for public office?

"Mr. TAFT. No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such a newspaper, or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose."

Senator Ellender, also one of the conferees made this statement:

> "May I say to the Senator from Florida it is only in the event that union funds are used for political contributions that a union becomes liable. Mr. Green can talk all he wants to, if he pays for his own time or if the members of the union desire to make individual contributions for such a purpose. For another thing, most unions operate and manage newspapers, and the most of them are maintained by advertisements or by subscriptions from members of the union and from other sources. The proceeds from such newspapers are not union funds. In such cases these newspapers can print anything they desire, and they will not violate the law, so long as union funds are not used to pay for the operation of those newspapers for political purposes." 93 Cong. Rec. 6522.

Application.—With this summary of the development of and quotation of excerpts from discussion in Congress concerning § 313, we turn to its interpretation and a determination as to whether it covers the circumstances charged in the indictment. Some members of the Court, joining in this opinion, do not place the reliance upon legislative history that this opinion evidences, but reach the same conclusion without consideration of that history. From what we have previously noted, it is clear that Congress was keenly aware of the constitutional limitations on legislation and of the danger of the invalidation by the courts of any enactment that threatened abridgment of the freedoms of the First Amendment. It did not want to pass any legislation that would threaten interferences with the privileges of speech or press or that would undertake to supersede the Constitution. The obligation rests also upon this Court in construing congressional enactments to

take care to interpret them so as to avoid a danger of unconstitutionality.[20]

If § 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.[21] In so far as some of the many statements made on the floor of Congress may indicate the thought, at the time, by certain members of Congress that the language of § 313

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[20] *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–408:

"It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. *Knights Templars Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205. And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning, which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. *Harriman* v. *Interstate Com. Comm.*, 211 U. S. 407."

Federal Trade Comm'n v. *American Tobacco Co.*, 264 U. S. 298, 307; *Missouri, P. R. Co.* v. *Boone*, 270 U. S. 466, 471–72; cf. *Blodgett* v. *Holden*, 275 U. S. 142, 147.

[21] Compare "Free discussion of the problems of society is a cardinal principle of Americanism—a principle which all are zealous to preserve." *Pennekamp* v. *Florida*, 328 U. S. 331, 346.

"The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great,

carried a restrictive meaning in conflict with that which we have adopted, we hold that the language itself, coupled with the dangers of unconstitutionality, supports the interpretation which we have placed upon it.

When Congress coupled the word "expenditure" with the word "contribution," it did so because the practical operation of § 313 in previous elections showed the need to strengthen the bars against the misuse of aggregated funds gathered into the control of a single organization from many individual sources. Apparently "expenditures" was added to eradicate the doubt that had been raised as to the reach of "contribution," not to extend greatly the coverage of the section.[22] One can find indications in the exchanges between participants in the debates that informed proponents and opponents thought that § 313 went so far as to forbid periodicals in the regular course of publications from taking part in pending elections where there was not segregated subscription, advertising or sales moneys adequate for its support. Of course, a periodical financed by a corporation or labor union for the purpose of advocating legislation advantageous to the sponsor or supporting candidates whose views are believed to coincide generally with those deemed advantageous to such organization is on a different level from newspapers devoted solely to the dissemination of news but the line separating the two classes is not clear. In the absence of definite statutory demarcation, the location of that line must await the full development of facts

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the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins*, 323 U. S. 516, 529–30.

"For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." *Bridges* v. *California*, 314 U. S. 252, 263.

[22] 93 Cong. Rec. 6436, 6437, 6439.

in individual cases. It is one thing to say that trade or labor union periodicals published regularly for members, stockholders or purchasers are allowable under § 313 and quite another to say that in connection with an election occasional pamphlets or dodgers or free copies widely scattered are forbidden. Senator Taft stated on the Senate floor that funds voluntarily contributed for election purposes might be used without violating the section and papers supported by subscriptions and sales might likewise be published.[23] Members of unions paying dues and stockholders of corporations know of the practice of their respective organizations in regularly publishing periodicals. It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication. It is unduly stretching language to say that the members or stockholders are unwilling participants in such normal organizational activities, including the advocacy thereby of governmental policies affecting their interests, and the support thereby of candidates thought to be favorable to their interests.

It is our conclusion that this indictment charges only that the CIO and its president published with union funds a regular periodical for the furtherance of its aims, that President Murray authorized the use of those funds for distribution of this issue in regular course to those accustomed to receive copies of the periodical and that the issue with the statement described at the beginning of this opinion violated § 313 of the Corrupt Practices Act.

We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an "expenditure in connection with any election" of candi-

[23] See 93 Cong. Rec. 6437–40.

dates for federal office intended to outlaw such a publication. We do not think § 313 reaches such a use of corporate or labor organization funds. We express no opinion as to the scope of this section where different circumstances exist and none upon the constitutionality of the section.

Our conclusion leads us to affirm the order of dismissal upon the ground herein announced.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 695.—October Term, 1947.

The United States of America, Appellant, v. Congress of Industrial Organizations, Philip Murray, Officer Thereof.	On Appeal from the District Court of the United States for the District of Columbia.

[June 21, 1948.]

Mr. Justice Frankfurter, concurring.

In a government operating under constitutional limitations there are obvious advantages in knowing at once the legal powers of the government. The desire to secure these advantages explains the strong efforts of some of the ablest members of the Philadelphia Convention to associate the judiciary through a Council of Revision in the legislative process.[1] The efforts failed, because the disadvantages of such a role by the judiciary were deemed greater than the advantages. And it cannot be too often recalled that the first Chief Justice and his Associates felt constrained to withhold even from the Father of his country answers to questions regarding which Washington was most anxious to have illumination from the Supreme Court, pertaining as they did to the President's powers during the Napoleonic conflict. See 3 Johnston, Correspondence and Public Papers of John Jay (1891) 486–89, and 10 Sparks, Writings of Washington (1847) 542–45; and see Thayer, Legal Essays (1908) 53–54.

Accordingly, the fact that it would be convenient to the parties and the public to know promptly whether a stat-

[1] See 1 Farrand, The Records of the Federal Convention of 1787 (1911) 21, 28, 94, 97 *et seq.*, 105, 107, 109, 110, 111 *et seq.*, 131, 138, 141, 144–45; 2 *id.* 71, 73 *et seq.*, 294–95, 298 *et seq.*

ute is valid, has not affected "rigid insistence" on limiting adjudication to actual "cases" and "controversies." To that end the Court has developed "for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision." Mr. Justice Brandeis, concurring, in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 345, 346. See also, more recently, *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450; *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129; *United Public Workers of America* v. *Mitchell*, 330 U. S. 75; *Rescue Army* v. *Municipal Court*, 331 U. S. 549.

A case or controversy in the sense of a litigation ripe and right for constitutional adjudication by this Court implies a real contest—an active clash of views, based upon an adequate formulation of issues, so as to bring a challenge to that which Congress has enacted inescapably before the Court. The matter was thus put by an authoritative commentator: "The determination of constitutional questions has been associated with the strictly judicial function and so far as possible has been removed from the contentions of politics. These questions have been decided after full argument in contested cases and it is only with the light afforded by a real contest that opinions on questions of the highest importance can safely be rendered." Charles Evans Hughes, The Supreme Court of the United States (1928) 32. The reason for this requirement of abstention was thus put by Chief Justice Marshall: "No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of a legislative act. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other points, a just respect for the legislature requires,

that the obligation of its laws should not be unnecessarily and wantonly assailed." *Ex parte Randolph*, 20 Fed. Cas. No. 11558 at 254, 2 Brock. 447, 478–79 (C. C. D. Va. 1833).

In order that a contest may fairly invite adjudication it is not necessary that the parties should be personally inimical to one another. On the other hand, the fact that the outward form of a litigation has not been contrived by pre-arrangement of the parties does not preclude want of a real contest which is essential to this Court's exercise of the "great gravity and delicacy" of its function in passing upon the validity of an act of Congress. *Ashwander* v. *Tennessee Valley Authority, supra*, at 345 and cases cited in footnote 3. This prerequisite may be lacking though there be entire disinterestedness on both sides in their desire to secure at the earliest possible moment an adjudication on constitutional power. It may be lacking precisely because the issues were formulated so broadly as to bring gratuitously before the Court that for which there is no necessity for decision, or because they invite formulation of a rule of constitutional law broader than is required by the precise facts of the situation or the terms of the assailed legislation. See *Liverpool, N. Y. and Phila. S. S. Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39; see also, Statement of the United States of America as Amicus Curiae, in *Burco, Inc.* v. *Whitworth*, 297 U. S. 248; Government's Brief in *Landis* v. *North American Co.*, 299 U. S. 248.

We are concerned here not with derogatory implications of collusion, nor have we a case of mootness with its technical meaning of a non-existent controversy. The circumstances bring the present record within those considerations which have led this Court in the past "for its own governance of cases confessedly within its

jurisdiction" to avoid passing on grave constitutional questions because the questions involving the power of Congress come before us not so shaped by the record and by the proceedings below as to bring those powers before this Court as leanly and as sharply as judicial judgment upon an exercise of congressional power requires.

This case is here under the unique jurisdiction of the Criminal Appeals Act of 1907, as amended, whereby decisions of District Courts raise almost abstract questions of law regarding the invalidity or construction of criminal statutes, in that they do not come here in the setting of normal adjudications on the merits of a controversy. Compare *United States* v. *Petrillo*, 332 U. S. 1, with the subsequent adjudication on the merits in *United States* v. *Petrillo*, 75 F. Supp. 176. It is most important that such a decision result from due weighing of the considerations which alone can justify the invalidation of an Act of Congress. This implies that there be presented to a District Court the most effective and the least misapprehending legal grounds for supporting what Congress has enacted, while at the same time constitutional adjudication is sedulously resisted by presenting to the District Court alternative constructions of what Congress has written so as to avoid, if fairly possible, invalidation of the statute. The decision of the District Court in this case comes to us wanting in both respects.

According to the District Court, the Government conceded that § 304 of the Taft-Hartley Act is an abridgment of "rights guaranteed by the First Amendment" but contended that "Congress has power under Article I, Section 4 of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections." This representation of the Government's argument below is made in the opinion of the District Court not once, not

twice, but thrice.[2] At the bar of this Court it was urged on behalf of the Government that the District Court misconceived the arguments of the Government, that what the District Court attributed to the Government is not what the Government argued below. But ordinary English words have lost all meaning if the District Judge does not say unequivocally and three times that that is what the Government has argued. It cannot be whistled away as a gauche manner of saying that inasmuch as utterance may under certain circumstances be restricted, § 304 is *not* in violation of the First Amendment. That may have been the argument put to the court below, but plainly enough that court did not so understand it. Who is to say how the lower court would have dealt with the problem of constitutionality before it, if the argument had been pitched differently than in the way in which it reached the court, or if the court's misapprehension had been corrected? No effort was made, by the familiar process of a petition for rehearing or for a clarification of

[2] 1. "The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections."

"Thus the Court is confronted with the necessity of passing on the validity of Section 304 of the Act, insofar as it relates to expenditures by labor organizations in connection with federal elections."

2. "It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment (which the government concedes was done here) because of its constitutional control over the manner of holding elections, and its consequent power to prevent corruption therein, and to secure clean elections."

3. "In support of its argument that congressional control over elections may be exercised in abridgement of rights protected by the First Amendment, the government points to the case of United Public Workers v. Mitchell, 330 U. S. 75."

the court's opinion, to see to it that the lower court manifested an understanding of the Government's contentions by not attributing an erroneous position to the Government. (See, for instance, petition for rehearing in *Morgan* v. *United States*, 304 U. S. 1, 23.)

Again, the defendants below did not urge below, as is ordinarily the way of defendants, a construction of the statute which would afford them the rights they claim—but would secure those rights not by declaring an Act of Congress unconstitutional but by an appropriate restriction of its scope. On its own motion, this Court now gives a construction to the statute, as is its duty to do, which takes the conduct for which defendants were indicted out of the scope of the statute without bringing the Court into conflict with Congress. Who can be confident that such a construction, which salvages the statute and at the same time safeguards the constitutional rights of the defendants, might not have commended itself to the District Court and eventually brought a different case, if any, before this Court for review?

I cannot escape the conclusion that in a natural eagerness to elicit from this Court a decision at the earliest possible moment, each side was at least unwittingly the ally of the other in bringing before this Court far-reaching questions of constitutionality under circumstances which all the best teachings of this Court admonish us not to entertain.

But since my brethren find that the case calls for adjudication, I join in the Court's opinion. I do so because of another rule of constitutional adjudication which requires us to give a statute an allowable construction that fairly avoids a constitutional issue. See my dissenting opinion in *Shapiro* v. *United States*, No. 49, decided this day.

SUPREME COURT OF THE UNITED STATES

No. 695.—October Term, 1947.

The United States of America, Appellant, v. Congress of Industrial Organizations, Philip Murray, Officer Thereof.	On Appeal from the District Court of the United States for the District of Columbia.

[June 21, 1948.]

Mr. Justice Rutledge, with whom Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy join, concurring in the result.

If § 313 as amended [1] can be taken to cover the costs of any political publication by a labor union, I think it comprehends the "expenditures" made in this case. By reading them out of the section, in order not to pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily.[2] I adhere to that policy. But I do not think it justifies invasion of the legislative function by rewriting or emasculating the statute. This in my judgment is what has been done in this instance. Accordingly I dissent from the construction given to the statute and from the misapplication of the policy. I also think the statute patently invalid as applied in these circumstances.

I.

The Court's interpretation of the section and the indictment are not entirely clear to me. But, as I understand

[1] Section 313 of the Corrupt Practices Act, as amended by § 304 of the Labor Management Relations Act of 1947, 61 Stat. 131.

[2] *Rescue Army* v. *Municipal Court*, 331 U. S. 549; *Ashwander* v. *Valley Authority*, 297 U. S. 288, concurring opinion of Mr. Justice Brandeis at 346–348; *Federation of Labor* v. *McAdory*, 325 U. S. 450; *United Public Workers* v. *Mitchell*, 330 U. S. 75.

the ruling, it is only that § 313 does not forbid labor unions to take part in pending elections[3] by publishing and circulating newspapers in regular course among their membership, although the costs of publication are paid from the union's general funds regardless of their source, *i. e.*, whether from subscriptions, advertising revenues and returns from per copy sales, or from union dues and other sources.

The line of coverage is marked without reference to the source from which the union derives the funds so expended,[4] but by whether others than members of the union receive free copies of the publication; and by whether the publication is "in regular course" or only in casual or occasional distributions. Apparently, in the latter event, circulation limited to the membership would fall within the prohibition as well as free (and perhaps also paid) distribution outside that circle.

The construction therefore comes down to finding that Congress did not intend to forbid these expenditures, though made from union funds, since they were made: (1) to sustain the publication of the union's political

[3] The statutory wording is: ". . . expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . ."

[4] The indictment explicitly charges that "The CIO News" was regularly (weekly) published by the C. I. O. and costs of publication and distribution, including the issue in question, were paid from the union's funds. There was no allegation concerning their source, whether from revenues not connected with or earmarked for receipt of the paper or from sources specifically so connected. The Court's opinion does not, nor could it fairly, assume that the allegations were limited to expenditure of funds derived from subscriptions, advertising revenues or returns from per copy sales. The opinion explicitly holds that source of the funds is immaterial under § 313 for coverage of the type of publication and circulation here involved.

views; (2) in the regular course of publishing and distributing a union newspaper; (3) with distribution limited substantially[5] to union members and not including outsiders. It is because applying § 313 to this type of expenditure would raise "the gravest doubt" of the section's constitutionality that the Court holds the section inapplicable.

If such an interpretation were tenably supportable on any other basis, I should be in accord with this happy solution. But neither the language of the section nor its history affords such a basis, unless indeed it may be that the wording is so broad, comprehensive, and indefinite that any possible construction which would apply to a union's publication of its political views would be subject to equally grave constitutional doubt, and therefore was not intended to be covered.

Indeed, so far as the present opinion concludes, that may be the case. For it does not hold that distribution outside the circle of membership, even in regular course, is forbidden or, if so, the prohibition would be constitutionally permissible. Neither does it rule that either consequence would follow from casual or occasional distribution within or without that circle. At the most it is indicated that the section more probably or possibly covers those situations than the one now eliminated. But there seems to be no corresponding intimation that the section would be valid in such coverage.

In fact the opinion points to no situation, relating to a union's expression of political views, which certainly could be taken as included and validly so. This, of course, comes down to excluding the present circumstances, not

[5] By the opinion's phrase, "in regular course to those *accustomed to receive copies*," p. 17, *ante*, (emphasis added), room seems to be left for the inference that insubstantial distribution outside the membership would not tend to bring the case within the section's terms.

to save the statute because there are other applications clearly and validly covered, but because there are such applications which may or may not be covered and which, if covered, may be equally or nearly as doubtful constitutionally. Such a course of construction, if followed in each instance of indictment on particular facts, would mean that the section could not apply in any instance of publication, because each would present "the gravest doubt" of constitutionality and therefore would be excluded.

The language of § 313, as amended, is sweepingly comprehensive. Insofar as presently pertinent it forbids labor unions as well as corporations ". . . to make a contribution or *expenditure in connection with* any election at which . . . [the designated federal officers] [6] are to be voted for," including primaries, conventions or caucuses held to select such candidates. (Emphasis added.)

The crucial words are "expenditure" and "in connection with." Literally they cover any expenditure whatever relating at any rate to a pending election, and possibly to prospective elections or elections already held. The broad dictionary meaning of the word "expenditure" takes added color from its context with "contribution." The legislative history is clear that it was added by the 1947 amendment expressly to cover situations not previously included within the accepted legislative interpretation of "contribution." [7] The coloration added is there-

[6] See note 3. The section as presently effective is quoted in full at note 1 of the Court's opinion.

[7] "Contribution" had been construed by legislative committees investigating campaign expenditures prior to 1947, see notes 9 and 10, though not always unanimously, not to cover expenditures made by labor unions in publishing their political views during campaigns or at other times. See H. R. Rep. No. 2093, 78th Cong., 2d Sess. 10–11; Sen. Rep. No. 101, 79th Cong., 1st Sess. 57–59, 83–84; H. R. Rep. No. 2739, 79th Cong., 2d Sess. 39–40, 46; Sen. Rep. No. 1, Part 2, 80th Cong., 1st Sess. 37, 38–39. It is not necessary to summarize the

fore not restrictive; it is expansive. See note 9. And in the absence of any indication of restriction, light on the scope of coverage can be found only in the legislative history.

When one turns to that source, he finds a veritable fog of contradictions relating to specific possible applications,[8] contradictions necessarily bred among both proponents and opponents of the amendment from the breadth and indefiniteness of the literal scope of the language used. But in one important respect the history again is clear, namely, that the sponsors and proponents had in mind three principal objectives.

These were: (1) To reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as

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differing viewpoints expressed in the 1947 debates concerning the validity of this construction. Whether valid or not would make only the difference between extending the statute's scope by adding to its terms or by "plugging a loophole," albeit a large one, created by misconstruction. In either event a large addition to the section's coverage was made. See, *e. g.*, 93 Cong. Rec. 6438–6440.

The Federal Corrupt Practices Act of 1925, 43 Stat. 1070, amended the preexisting legislation forbidding a corporate "money contribution" by changing that term to "contribution" and defining this to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution . . ." Since "expenditure" was intended to broaden "contribution" in the 1947 amendment of § 313, it would seem that its scope could hardly be less broad than was given by the 1925 Act's definition to "contribution," although the Government does not appear to urge that "expenditure" incorporates that definition.

[8] See 93 Cong. Rec. 6436–6441, 6446–6448, and excerpts quoted in the Court's opinion and the appendix to this one. Cf. also notes 11, 12, 13.

corporate entities; and (3) to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views.[9] Shortly, these objects may be designated as the "undue influence," "purity of elections," and "minority protection" objectives. They are obviously interrelated, but not identical. And the differences as well as their combination become important for deciding the scope of the section's coverage and its validity in specific application.

With those objects in mind as throwing light on the section's coverage under the broad language employed, we turn to the legislative history on that subject. The Government centers the discussion, both on coverage and on constitutionality, around the "minority protection" objective. And the legislative discussion, taking place almost exclusively in the Senate and dominated largely

[9] These were the objects of the prohibition against "contributions" by labor unions, which first appeared on a temporary basis in 1943 in the War Labor Disputes Act, which by its terms was to expire six months following the termination of hostilities. Act of June 25, 1943, c. 144, § 9, 57 Stat. 167. See Hearings before a Subcommittee of the Committee on Labor on H. R. 804 and H. R. 1483, 78th Cong., 1st Sess. 2, 4, 117, 118, 133. Cf. 89 Cong. Rec. 5328, 5334, 5792. The Government's brief states that the legislative history of the 1943 Act shows that the principal basis of the extension to labor unions, like that of the same and earlier acts applying the corporations, "was the securing of elections in accordance with the will of the people through removing disproportionate influences exerted by means of large aggregations of money."

Since the 1947 amendment to § 313 was designed to make permanent the prohibitions of the 1943 Act, H. R. Rep. No. 245, 80th Cong., 1st Sess. 46; H. R. Rep. No. 510, 80th Cong., 1st Sess. 67–68 (Conference report to accompany H. R. 3020), and to expand them by adding "expenditures," the objects of the 1943 Act necessarily were carried forward into the 1947 amendment. *Ibid.* See also 93 Cong. Rec. 3428.

by the Labor Management Act's sponsor in that body, also took this purpose as the central theme.[10]

The discussion ranged around a great variety of possible specific applications,[11] with concentration upon both the scope and the validity of the provision. The Senate sponsor responded to a flood of inquiries with candor and so far as possible with precision and certainty concerning particular situations under his view of the section's criterion,[12] although in numerous instances he was

[10] Congressional committees investigating campaign expenditures in 1946 and 1947 had recommended that "expenditures" be added to the prohibition of § 313. See H. R. Rep. No. 2739, 79th Cong., 2d Sess. 39–40, 46; Sen. Rep. No. 1, Part 2, 80th Cong., 1st Sess. 37, 38–39. The so-called Taft-Hartley Bill as introduced in the House contained the prohibition, H. R. 3020, 80th Cong., 1st Sess., § 304, while the Senate version did not. S. 1126, 80th Cong., 1st Sess. There was apparently little discussion in either body on the matter until the conference report incorporating the provision was made. H. R. Rep. No. 510, 80th Cong., 1st Sess. Then lengthy discussion ensued in the Senate, from which excerpts are quoted in the Court's opinion and in the appendix to this one. See 93 Cong. Rec. 6436–6441, 6445–6448, 6522–6524, 6530.

[11] Some of the more important instances included whether the section applies to forbid political comment or information "in connection with" elections by corporately owned newspapers and periodicals, in regular course of distribution, 93 Cong. Rec. 6436, or in special editions, *ibid.*; by "house organs," *id.* 6440, or like publications put out by corporations engaging primarily in other business than publishing; by religious, *ibid.*, and charitable corporations; by organizations like the Anti-Saloon League, *ibid.*; by radio commentators sponsored by commercial corporations, *id.* 6439, 6447; by trade associations, such as the National Association of Manufacturers, which receive funds from constituent corporations, *id.* 6438.

These inquiries generally proceeded with analogous ones relating to comparable activities of unions and comparable responses, touching for example P. A. C. activities; labor publications, regular or special; sponsored broadcasts, etc. Illustrative responses are set forth in note 12.

[12] *E. g.*, the regular corporately owned press was considered not covered as to its ordinary circulation, because "that is the operation

equally candid in stating doubt or disability to give positive opinions, at times in the absence of further facts.[13]

What is most significant for the question of coverage, however, and for the Court's construction in this case, is the fact that in making his responses to the numerous

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of the newspaper itself," 93 Cong. Rec. 6437. The same exemption from coverage, however, was thought not to extend to regularly published union or labor papers, since members' dues could not be so used without specific earmarking or designation by each for such use, even though from previous practice they might know such use would be made. *Id.* 6440. On the other hand, neither the regular press, corporately owned, nor union papers could publish special editions or distribute them with or without charge. Nor could house organs, union or corporate, comment politically, or religious organizations, if incorporated; neither could associations like the National Association of Manufacturers, which receive funds from corporations and by such expenditures would be making "contributions" indirectly. Problems involving organizations like the Anti-Saloon League and sponsored radio broadcasts, whether by unions or corporations, as well as guest appearances of candidates and others supporting them on sponsored radio programs, raised matters of greater difficulty. See the various pertinent citations in note 11. Cf. notes 13 and 14.

[13] The problems raised in connection with radio discussions presented particularly dubious situations, frequently admitted to call for further facts, to present questions of fact, and to require fine lines of distinction. See, *e. g.*, 93 Cong. Rec. 6439, 6440.

Difficulty arose and doubt was expressed also over what would constitute political comment, *e. g.*, publishing an incumbent candidate's voting record, *id.* 6438, 6446, 6447, an instance in which the sponsor at first disagreed with Senator Ball, but later apparently though somewhat equivocally agreed with him that publication of the record without comment further than "merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects" would not be forbidden, *id.* 6447; corporate broadcasts not for or against a candidate, but for a party or relating to issues in the election, said to be "again, a question of fact" and to depend on "how close it is to the election." *Ibid.* These instances are illustrative only, not comprehensive. Cf. note 29.

and varied inquiries he tested coverage invariably or nearly so by applying the very criterion the Court now discards, namely, the source of the funds received and expended in making the political publication.

That is, in his view that the primary purpose of the amendment was "minority protection," the line drawn by the section was between funds received by the union expressly for the purpose of the publication and earmarked for that purpose and, on the other hand, funds not so limited by the person or source supplying them.[14] There was strong opposition to the provision and spirited exchange between proponents and critics of the measure concerning its wisdom and its constitutionality. But there was no disagreement among them that the sponsor's test was the intended criterion. Indeed the legislative discussion was stated explicitly to be for the purpose of making plain beyond any question that this was so.[15] Although there were many differences over whether specified types of activity would fall under the criterion's ban and doubts concerning others, the purpose succeeded. There was no divergence from the view that political comment by a union paper or other instrumentality using nonsegregated funds was within the section's coverage. When this was the source of the expend-

[14] This rubric turned the answers to the inquiries and situations mentioned in notes 11, 12 and 13, as indeed to all others. If the funds used for the publication came to the corporate or union treasury without securing the contributor's express consent for that use, the organization could not so apply them; if so contributed, they could be thus employed. Except in the case of the regular corporate press which presumably was not covered as to ordinary circulation, cf. note 12 *supra*, expenditure of any corporate or union funds not derived from operation of the publication, *e. g.*, from advertising revenues or returns from per copy sales, or funds received from individuals without individual and explicit authorization for the purpose of the publication was forbidden.

[15] See the appendix to this opinion at p. 28 *post*.

iture it violated the intended prohibition of the section whether or not the publication was in regular course and whether or not it went to others than members and persons accustomed to receive it.

If therefore the sponsor's steadfast view can have weight to determine the coverage of a statute indefinite in its terms, *Wright* v. *Vinton Branch*, 300 U. S. 440; *United States* v. *Dickerson*, 310 U. S. 554; *United States* v. *American Trucking Assns.*, 310 U. S. 534; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, this case is brought squarely within the prohibition of § 313. This is conclusively established by the excerpts from the legislative discussion quoted in the Court's opinion. Others to the same effect are added to this one as an appendix.

Moreover in his message vetoing the Labor Management Act of 1947 the President stated that § 313 "would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections." H. R. Doc. No. 334, 80th Cong., 1st Sess. 9. In the debate preliminary to the overriding of the veto, none of the legislators in charge of the measure gave any indication that they differed with the President's interpretation. Nor could they have differed, for the statement in the veto message gave effect to their clearly expressed views as to the section's coverage in the specific instance stated.

Thus, in the face of the legislative judgment, reiterated after veto, and of the Chief Executive's in making his veto, this Court sets aside the one clearly intended feature of the statute apart from its general objectives. I doubt that upon any matter of construction the Court has heretofore so far presumed to override the plainly and incontrovertibly stated judgment of all participants in the legislative process with its own tortuously fashioned view. This is not construction under the doctrine of

strict necessity. It is invasion of the legislative process by emasculation of the statute. The only justification for this is to avoid deciding the question of validity.

II.

We are concerned in this case with the constitutionality of § 313 as amended only insofar as it may be applied in restriction or abridgment of the rights of freedom of speech, press and assembly secured by the First Amendment.[16] Other applications are not in question. There can be little doubt of Congress' power to regulate the making of political contributions and expenditures by labor unions, as well as by other organizations and individuals, in the interest of free and pure elections and the prevention of official corruption, by appropriate measures not trenching on those basic rights. But when regulation or prohibition touches them, this Court is duty bound to examine the restrictions and to decide in its own independent judgment whether they are abridged within the Amendment's meaning.[17] That office cannot be surrendered to legislative judgment, however weighty, although such judgment is always entitled to respect.

As the Court has declared repeatedly, that judgment does not bear the same weight and is not entitled to the same presumption of validity, when the legislation on its face or in specific application restricts the rights of conscience, expression and assembly protected by the Amendment, as are given to other regulations having

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[16] Since the statute in my judgment abridges those freedoms here, it is unnecessary to consider other groundings urged for its invalidation.

[17] *Thomas* v. *Collins*, 323 U. S. 516, 531; *Board of Education* v. *Barnette*, 319 U. S. 624, 639; *Thornhill* v. *Alabama*, 310 U. S. 88, 96; *Schneider* v. *State*, 308 U. S. 147, 161.

no such tendency.[18] The presumption rather is against the legislative intrusion into these domains. For, while not absolute, the enforced surrender of those rights must be justified by the existence and immediate impendency of dangers to the public interest which clearly and not dubiously outweigh those involved in the restrictions upon the very foundation of democratic institutions, grounded as those institutions are in the freedoms of religion, conscience, expression and assembly. Hence doubtful intrusions cannot be allowed to stand consistently with the Amendment's command and purpose,[19] nor therefore can the usual presumptions of constitutional validity, deriving from the weight of legislative opinion in other matters more largely within the legislative province and special competence, obtain. It is in the light and spirit of these principles that the validity of § 313 as claimed to be applicable here must be determined.

At the outset the Government admits that § 313, in prohibiting expenditures in connection with any federal election, does "bring into play" the rights of freedom of speech, press and assembly. This is a necessary consequence of its construction of the section and the presently attempted application. But it is claimed no unconstitutional abridgement is involved. This, because it is said Congress has power to act to preserve the freedom and purity of federal elections, under Art. I, § 4, of the Constitution,[20] and of official action. Thus it is claimed the First Amendment's guaranties are balanced by this other

[18] *Thomas* v. *Collins*, 323 U. S. 516, 530; *Thornhill* v. *Alabama*, 310 U. S. 88, 95; *Schneider* v. *State*, 308 U. S. 147, 161; cf. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, n. 4.

[19] *Thomas* v. *Collins*, 323 U. S. 516, 530; and cf. other cases cited in note 17.

[20] "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legisla-

constitutional provision; and Congress' exercise of the authority granted by it is entitled to the same weight and presumptive validity in placing limits upon the freedoms as attaches in their favor in other connections. Accordingly, the usual preeminence accorded to the First Amendment liberties disappears, it is said, and the legislative judgment, having rational basis in fact and policy, becomes controlling.

Apart from the question whether the same argument might not be applicable to all other powers granted to Congress by the Constitution, to destroy the principles stated for securing the preferential status of the First Amendment freedoms, the argument ignores other equally settled corollary principles. These are that statutes restrictive of or purporting to place limits to those freedoms must be narrowly drawn to meet the precise evil the legislature seeks to curb, *Cantwell* v. *Connecticut*, 310 U. S. 296; *Thornhill v. Alabama*, 310 U. S. 88; *Schneider* v. *State*, 308 U. S. 147; *De Jonge* v. *Oregon*, 299 U. S. 353; *Saia* v. *New York*, 334 U. S. —, and that the conduct proscribed must be defined specifically so that the person or persons affected remain secure and unrestrained in their rights to engage in activities not encompassed by the legislation. Blurred signposts to criminality will not suffice to create it. *Cantwell* v. *Connecticut*, *supra*; *Stromberg* v. *California*, 283 U. S. 359; cf. *Thomas* v. *Collins*, 323 U. S. 516; *Winters* v. *New York*, 333 U. S. 507.

Section 313 falls far short of meeting these requirements, both in its terms and as infused with meaning from the legislative history. This is true whether the section

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ture thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

See also U. S. Const., Art. I, § 2, clause 1, § 8, clause 18. Cf. as to Congress' power over the electoral process, *Ex parte Yarbrough*, 110 U. S. 651; *United States* v. *Classic*, 313 U. S. 299.

is considered in relation to one or another of the evils said to be its targets or with reference to all of them taken together.

If the evil is taken to be the corruption of national elections and federal officials by the expenditure of large masses of aggregated wealth in their behalf, the statute is neither so phrased nor so limited in its legislative construction. Indeed the Government does not explicitly argue corruption *per se* arising from union expenditures for publication in the same sense as gave rise to the original and later legislation against corporate contributions down to the War Labor Disputes Act of 1943. And very little in the legislative history directly suggests this evil, although there are inferences implicit in some statements that it was not entirely out of mind.[21] So also with the Government's argument.[22]

The Government stresses the "undue influence" of unions in making expenditures by way of publication in support of or against candidates and political issues involved in the campaign rather than corruption in the gross sense. It maintains that large expenditures by unions in publicizing their official political views bring about an undue, that is supposedly a disproportionate, sway of electoral sentiment and official attitudes. In short, the "bloc"

[21] As has been noted, the Senate debate went largely on the "minority protection" basis of justification with only inferential or incidental reference to corrupting influence and occasional suggestions of "undue influence." See, however, the statements of Representative Hoffman, 93 Cong. Rec. 3428, and of Senator Taft, *id.* 6437.

[22] The brief, however, includes among the reasons for the prohibition of § 313 "A distrust of the use of large contributions, not because these prove corruption, but because the large single contributions imply resulting obligations and, therefore, can breed corruption"; and goes on to state that "there is no practical difference between a contribution and an expenditure so far as the effect of the use of money for campaign purposes is concerned."

power of unions has become too great, in influencing both the electorate and public officials, to permit further expenditure of their funds in directly and openly publicizing their political views. And the asserted evil is to be uprooted by prohibition of union expenditures as such, not by regulation specifically drawn to meet it.

There are, of course, obvious differences between such evils and those arising from the grosser forms of assistance more usually associated with secrecy, bribery and corruption, direct or subtle. But it is not necessary to stop to point these out or discuss them, except to say that any asserted beneficial tendency of restrictions upon expenditures for publicizing political views, whether of a group or of an individual, is certainly counterbalanced to some extent by the loss for democratic processes resulting from the restrictions upon free and full public discussion. The claimed evil is not one unmixed with good. And its suppression destroys the good with the bad unless precise measures are taken to prevent this.

The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. Cf. *Bowe* v. *Secretary of the Commonwealth*, 320 Mass. 230, 251–252. It is not by accident, it is by explicit design, as was said in *Thomas* v. *Collins*, *supra* at 530, that these freedoms are coupled together in the First Amendment's assurance. They involve the right to hear as well as to speak, and any restriction upon either attenuates both.

There is therefore an effect in restricting expenditures for the publicizing of political views not inherently present in restricting other types of expenditure, namely, that it necessarily deprives the electorate, the persons entitled

to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose.

The most complete exercise of those rights is essential to the full, fair and untrammeled operation of the electoral process. To the extent they are curtailed the electorate is deprived of information, knowledge and opinion vital to its function. To say that labor unions as such have nothing of value to contribute to that process and no vital or legitimate interest in it is to ignore the obvious facts of political and economic life and of their increasing interrelationship in modern society. Cf. *DeMille* v. *American Federation of Radio Artists*, 31 Cal. 2d 137. That ostrichlike conception, if enforced by law, would deny those values both to union members and to the voting public in general. To compare restrictions necessarily resulting in this loss for the public good to others not creating it is to identify essentially different things. The cases are not identical. The loss inherent in restrictions upon expenditures for publicizing views is not necessarily involved in other expenditures.

It is this very difference, of course, which brings into play the First Amendment's prohibitions and the principles giving them presumptive weight against intrusions or encroachments upon the area the Amendment reserves against legislative annexation. It is this difference, the very fact that the restriction seeks to contract the boundaries of expression and the right to hear previously considered open, which forces upon its authors the burden of justifying the contraction by demonstrating indubitable public advantage arising from the restriction outweighing all disadvantages, thus reversing the direction of presumptive weight in other cases.

If therefore it is an evil for organized groups to have unrestricted freedom to make expenditures for directly

and openly publicizing their political views and information supporting them, but cf. *Bowe* v. *Secretary of the Commonwealth, supra* at 252, it does not follow that it is one which requires complete prohibition of the right. *Ibid.* That is neither consistent with the Amendment's spirit and purpose, *ibid.*, nor essential to correction of the evil, whether it be considered corruptive influence or merely influence of undue or disproportionate political weight.

It is not necessary now to consider whether restricting the rights of individuals, singly or in organized relationships, to publicize their political views, a right often essential to their survival and always to their well being, can be accommodated, in some instances, with the Amendment's purpose or justified because in legislative judgment unless restricted those persons acquire "undue influence" in the electoral process. For "undue influence" in this connection may represent no more than convincing weight of argument fully presented, which is the very thing the Amendment and the electoral process it protects were intended to bring out. And one may question how far legislators may go in accurately assessing undue or disproportionate weight as distinguished from making substantially accurate findings and conclusions concerning corruption.

But even if the right to sway others by persuasion is assumed to be subject to some curtailment, in the interest of preventing grossly unbalanced presentations, that right cannot be wholly denied, *Bowe* v. *Secretary of the Commonwealth, supra* at 252; nor can it be restricted beyond what is reasonably and clearly necessary to correct an evil so gross and immediate that the correction indubitably outweighs the loss to the public interest resulting from the restriction.

Here the restriction in practical effect is prohibition, not regulation, when it is considered with respect to the

objects of suppressing corruption and "undue influence." It is not a limitation, it is a prohibition upon expenditure of union funds in connection with a federal election. Unions can act and speak today only by spending money, as indeed is true of nearly every organization and even of individuals if their action is to be effective. As was said in the course of the Senate debates, the interdiction applies to "a dollar, or 50 cents, or $500 or $1,000." 93 Cong. Rec. 6438. There is no showing, legislative or otherwise, of corruption so widespread or of "undue influence" so dominating as could possibly justify so absolute a denial of these basic rights. The statute, whether in terms or as given meaning by the legislative history, is not narrowly drawn to meet the precise evils of corruption or "undue influence," if these were the controlling objects of the legislation. Nor, as will appear, were the restrictions specifically defined, if they can be considered to have been defined at all, so as to leave the union secure and unrestrained in the right to engage in activities within the region of the First Amendment's coverage but not encompassed by the legislation.

As has been stated, it was the "minority protection" idea which became the dominantly stressed one in the Senate debates, although at the most § 313 on its face gave only slight suggestion of this purpose. Nor was there indication in the section's terms that its prohibition turns on the source from which the funds expended were derived. The language bearing on this was "expenditure in connection with an election" and no more. Literally all union expenditures in that connection were outlawed. There is not a word to suggest that unions could spend their funds in that manner if contributed expressly for the purpose or derived from such sources as advertising revenues, subscriptions, etc., received in connection with publication of a paper in regular course or otherwise. The limitation of the prohibition

to funds received generally, *i. e.*, without specific designation for use in political publicity, is almost wholly a construction of the Senate sponsor, so far as appears from the legislative history.

Notwithstanding accepted canons of statutory construction, it certainly would be going far to expect laymen, or even lawyers, to read a statute so lacking in specificity concerning its basic criterion with any semblance of understanding of its limitations.

The lawyer might indeed read the Congressional Record and conclude that the source of the funds used was the crux. But even he would be left in broad and deep doubt whether it would turn multitudinous situations one way or the other. If the section is taken nevertheless to have been intended to draw the sponsor's line of distinction, the restriction it makes remains a drastic one. The effect is not merely one of minority-protection. It is also one of majority prohibition. Cf. *DeMille* v. *American Federation of Radio Artists, supra.* Under the section as construed, the accepted principle of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy. *Ibid.* Union activities in political publicity are confined to the use of funds received from members with their explicit designation given in advance for the purpose.[23] Funds so received from members can be thus expended and no others. Even if all or

[23] Apparently the Senate sponsor considered that revenues derived from the operation of union newspapers, such as advertising revenues, etc., are available for political publicity, although they are union funds in which politically dissentient members have interests proportionally with concurring ones and, it seems, do not give explicit consent to such use. The situation would seem to be exceptional in permitting the union to use its own funds for political publicity.

the large majority of the members had paid dues with the general understanding that they or portions of them would be so used, but had not given explicit authorization, the funds could not be so employed.[24] And this would be true even if all or the large majority were in complete sympathy with the political views expressed by the union or on its behalf with any expenditure of money, however small.

It is true that the union could ask and in many instances secure the required explicit assents. It seems to be suggested that this might be done by expressly designating a specific portion of the dues for political uses, possibly though not at all clearly by by-law or constitutional provision, possibly by earmarking upon statements of dues payable. But it is not made clear whether the member could refuse to pay the earmarked portion and retain membership or would have to pay it to remain in that status. If the latter is true, the section affords little real "minority protection"; if the former, the dissentient is given all the benefit derived from the union's political publicity without having to pay any part of its cost. This is but another of the important and highly doubtful questions raised on the section's wording and construction.

The section does not merely deprive the union of the principle of majority rule in political expression.[25] Cf. *DeMille* v. *American Federation of Radio Artists*, *supra*. It rests upon the presumption that the majority are out of accord with their elected officials in political viewpoint and its expression and, where that is not the

[24] See note 12 *supra*.

[25] It would even seem questionable whether union funds, not individually earmarked for the purpose, could be used for calling union meetings to discuss and determine official political policies or to hear candidates or others expressing their views on campaign issues. Cf. note 30 *infra*.

case, it casts the burden of ascertaining minority or individual dissent not upon the dissenters but upon the union and its officials. The former situation may arise, indeed in one notable instance has done so. But that instance hardly can be taken to be a normal or usual case. Unions too operate under the electoral process and the principle of majority rule. Nor in the latter situation does it seem reasonable to presume dissent from mere absence of explicit assent, especially in view of long-established union practice.

If merely "minority or dissenter protection" were intended, it would be sufficient for securing this to permit the dissenting members to carry the burden of making known their position and to relieve them of any duty to pay dues or portions of them to be applied to the forbidden uses without jeopardy to their rights as members. This would be clearly sufficient, it would seem, to protect dissenting members against use of funds contributed by them for purposes they disapprove, but would not deprive the union of the right to use the funds of concurring members, more often than otherwise a majority, without securing their express consent in advance of the use.[26]

Again, in view of these facts, the section is more broadly drawn than is necessary to reach the intended evil. Moreover, this demonstrates, in my opinion, that "minority

[26] This difference is minimized, though noted, in the Government's comparison of § 313 with the British legislation and experience. Cf. Trade Union Act of 1913, 2 & 3 Geo. V, c. 30; Trade Disputes and Trade Unions Act of 1927, 17 & 18 Geo. V, c. 22, repealed by Trade Disputes and Trade Unions Act of 1946, 9 & 10 Geo. VI, c. 52. The legislation was not intended to prevent expenditures for union newspapers. See Rothschild, Government Regulation of Trade Unions in Great Britain: II, 38 Col. L. Rev. 1335, 1364. And see further regarding the British legislation's effect, *DeMille* v. *American Federation of Radio Artists*, 31 Cal. 2d 137, 148, distinguishing *Amalgamated Society of Railway Servants* v. *Osborne* [1910] A. C. 87.

protection" was not the only or perhaps the dominant object of its enactment. That object was rather to force unions as such entirely out of political life and activity, including for presently pertinent purposes the expression of organized viewpoint concerning matters affecting their vital interests at the most crucial point where the expression would become effective. Cf. *Thomas* v. *Collins*, *supra* at 536–537; *Board of Education* v. *Barnette*, 319 U. S. 624, 642; *Bridges* v. *California*, 314 U. S. 252, 269. And so we come back to the conjunction of objectives which, taken together, are claimed to sustain the section's validity.

It would be a very great infringement of individual as well as group freedoms, affecting vast numbers of our citizens, if labor unions could be deprived of all right of expression upon pending political matters affecting their interests. But we need not now decide whether § 313 has gone so far.[27]

For if we assume that the objects said to have been the motivation for enacting § 313 can sustain substantial limitations upon the rights of free expression and assembly, they cannot support the sweeping and highly indefinite restrictions placed upon them, whether by the section as drawn, as legislatively construed, or as sought to be applied. It is difficult to conceive a statute affecting those rights more lacking in precision, more broad in the scope of doubt and uncertainty of its reach.

We have only the broad and indefinite words "expenditure in connection with any election." Apart from the literal sweep of "expenditure" and the large area of doubt created by efforts to confine it, what is "in connection

[27] Cf.: "It is perfectly clear that union funds are not to be used to interfere in political campaigns and with political candidates, either in favor of one candidate or against another candidate." 93 Cong. Rec. 6437. "Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics." *Id.* 6440.

with"?[28] What is a forbidden because a political comment?[29] What sorts of union activities outside of publishing a newspaper with unsegregated funds would fall under the ban?[30]

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[28] When does the connection begin? Obviously not with the date of the election, primary, convention or caucus. How long beforehand, with the announcement of candidacies or with earlier though not always public efforts to induce persons to run? When does the connection end? With the election of candidates in the one case and the election of officers in the other or does it extend to activities relating to these events taking place later?

[29] The publication of bare facts, *e. g.*, voting records, of quotations from speeches and addresses, their reproduction in full? Cf. note 13. And does accuracy or inaccuracy of the quotation make the difference between criminality and legality? Could a president's speech in the course of a campaign for reelection be reproduced in a union newspaper published with unsegregated funds, whether designedly and clearly political or purporting not to be so? Where to draw the line between facts and comment, or comment and advocacy or opposition?

[30] A summary from appellees' brief indicates the scope and variety of questions which would arise:

"This measure thus on its face would prevent a labor organization from holding a meeting for the purpose of advocating the election or defeat of a particular political candidate. It would preclude a labor organization from organizing a public gathering to advocate the election of a candidate pledged to the defeat of such a measure as Section 304. [§ 313 as amended.]

"A labor organization under this statute could not place at the disposal of a candidate its own hall. It could not engage radio time to denounce a candidate who had identified himself with interests fundamentally opposed to those basic to the interests of the defendants. Nor could it pay the salary or expenses of an individual for the purpose of permitting him to participate in a political campaign.

"Handbills, placards or union newspapers advising the union membership of the voting records of public officials could not be published or distributed at election time to advocate either the election of labor's friends or the defeat of labor's enemies. Paid advertisements and radio publications for the same purposes would be likewise proscribed.

"No matter how dangerous the threat presented by a candidate

The catalogue of doubt and uncertainty need not be extended. Throughout the preceding discussion, both of coverage and of validity, instances have been noted which demonstrate its encyclopedic scope. The case is not one where a hard core of certain prohibition has been formed, with only a fringe of doubt narrow in scope at its outer boundary. Indeed the difference between the view now taken by the Court and that taken by the Senate and presumably by the House shows that even the core is soft. To the gambles of the statute itself are added those of guessing not only at its perimeter but at its very center. Nor have these been lessened by today's decision other than by eliminating the one application the legislative discussion had sought to make clear.

Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure

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to the fundamental interests of a labor organization, it is powerless under this law to speak and to inform the people of its views. It could not send to a single member a penny postcard dealing with such a candidate. It could not even send a delegate or observer to a political convention.

"It could oppose bad laws but not 'in connection with any election'. It could endorse good laws but at all times both its opposition and its endorsement would be undertaken at the peril of crossing the line at which such opposition or endorsement or advocacy could be regarded as being 'in connection with any election'.

"Moreover, a labor organization could not sponsor a public meeting in connection with an election for the purpose of hearing the views of candidates of various political parties with respect to issues of importance to its membership since such a meeting would inevitably require expenditures.

"The traditional campaigns on the part of labor organizations prior to federal elections to 'get out the vote' would, since they require expenditures, be proscribed by the statute. And the publication of voting guides and analyses of the voting records of candidates would likewise be condemned."

up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage. In this respect the amendment's policy adds its own force to that of due process in the definition of crime to forbid such consequences. Cf. *Winters* v. *New York*, *supra*. If the statute outlaws all union expenditures for expression of political views, it is a bludgeon ill-designed for curbing the evils said to justify its enactment, without also curbing the rights. If the section does less, the exact thing forbidden is too loosely defined and the consequent cloud cast over the things not proscribed but within the Amendment's bearing is far too great. In this aspect and taking account of the criminal sanctions imposed, the section serves as a prior restraint upon the freedoms of expression and of assembly the Amendment was designed to secure. Only a master, if any, could walk the perilous wire strung by the section's criterion.

The force of these considerations is vastly multiplied when it is recalled that, unless they were effective to nullify the section in its application to publicizing activities, the broadly prohibitive and blanketing consequences would be applicable also to all similar corporate political expressions, possibly not excepting even those of the regularly conducted corporate press.[31] This would be true, for

[31] Cf. the President's view, stated in his veto message as follows:

"Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinctions between expenditures made by such corporations for the purpose of influencing the results of an election, and

instance, if the Senate sponsor's contrary view should meet the same fate in this Court that his view of the section's application to the presently involved situation has met. Moreover, in the sponsor's view special editions and apparently free distribution by such corporate publishers, containing political items, would appear to fall under the ban.

The argument for applying and sustaining the section in its presently attempted application has gone largely upon the assumption that it would be valid as applied to similar corporate publications, excepting possibly the regular press. The assumption is one not justified by any decision of this Court, which has the final voice in such matters. There are of course important legal and economic differences remaining between corporations and unincorporated associations, including labor unions, which justify large distinctions between them in legal treatment. But to whatever extent this may be true, it does not follow that the broadside and blanketing prohibitions here attempted in restriction of freedom of expression and assembly would be valid in their corporate applications. Corporations have been held within the First Amendment's protection against restrictions upon the circulation of their media of expression. *Grosjean* v. *American Press Co.*, 297 U. S. 233. It cannot therefore be taken, merely upon legislative assumption, practice or judgment, that restrictions upon freedoms of expression by corporations are valid. Again, those matters cannot be settled finally until this Court has spoken.

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other expenditures made by them in the normal course of their business 'in connection with' an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations." H. R. Doc. No. 334, 80th Cong., 1st Sess. 9–10.

Finally, if § 313 is taken in the Court's construction, in my opinion its constitutionality stands in no better case. For I know of nothing in the Amendment's policy or history which turns or permits turning the applicability of its protections upon the difference between regular and merely casual or occasional distributions. Indeed pamphleteering was a common mode of exercising freedom of the press before and at the time of the Amendment's adoption. It cannot have been intended to tolerate exclusion of this form of exercising that freedom. Nor does making the difference between distribution to dues-paying members only and distribution to outsiders or the public, whether with or without price, make a constitutional difference. The Amendment did not make its protections turn on whether the hearer or reader pays, or can pay, for the publication or the privilege of hearing the oral pronouncement. Neither freedom of speech and the press nor the right of peaceable assembly is restricted to persons who can and do pay.

A statute which, in the claimed interest of free and honest elections, curtails the very freedoms that make possible exercise of the franchise by an informed and thinking electorate, and does this by indiscriminate blanketing of every expenditure in connection with an election, serving as a prior restraint upon expression not in fact forbidden as well as upon what is, cannot be squared with the First Amendment.

"Mr. PEPPER. . . .

"I wish to ask the Senator, if I may, this question: Would the newspaper called Labor, which is published by the Railway Labor Executives, be permitted to put out a special edition of the paper, for example, in support of President Truman, if he should be the Democratic candidate for the Presidency next year, and in opposition to the Senator from Ohio, if he should be the Republican nominee for the Presidency, stating that President Truman was a friend of labor and that the Senator from Ohio was not friendly to labor? Would that be called a political expenditure on the part of the labor organization?

"Mr. TAFT. If it were supported by union funds contributed by union members as union dues it would be a violation of the law, yes. It is exactly as if a railroad itself, using its stockholders' funds, published such an advertisement in the newspaper supporting one candidate as against another. If the paper called Labor is operated independently, if it derives its money from its subscribers, then of course there would be no violation. The prohibition is against a labor organization using its funds either as a contribution to a political campaign or as a direct expenditure of funds on its own behalf." (93 Cong. Rec. 6436.)

"Mr. PEPPER. . . . Yet the Senator from Ohio says that the newspaper Labor, published by the 21 railway labor executives, would not be permitted to publish a statement saying that it supported President Truman and opposed Candidate Taft, or vice versa. I say that would be a deprivation of the freedom of the press.

"Mr. TAFT. No; I said that union funds could not be used for that purpose. They could conduct a newspaper if they wanted to, just as a corporation can conduct a newspaper. But why should a labor organization be able to publish pamphlets or special newspapers against one candidate or in favor of another candidate, using funds which that organization collected from the union members?" (*Id.* 6436–6437.)

"Mr. PEPPER. Mr. President, I call the attention of the Senator from Ohio to the following practice of the railway labor executives in the past: If a certain candidate was unfriendly to the interests of labor, they would publish a special edition of their paper and would put that special edition into circulation in the area where that candidate was running for office, and would place it in the hands of labor-union members and also in the hands of the public generally.

"Mr. TAFT. That is exactly what they should not be allowed to do.

"Mr. PEPPER. Very well; I want it definitely understood that the Senator from Ohio intends to outlaw that privilege on the part of labor. Now that I have that clear—

"Mr. TAFT. It is perfectly clear. It is perfectly clear that union funds are not to be used to interfere in political campaigns and with political candidates, either in favor of one candidate or against another candidate. . . ." (*Id.* 6437.)

"Mr. BARKLEY. So if there is a labor organization which is publishing a newspaper—not as a political newspaper, but for the benefit of its members—and if the expenses of that publication and distribution are paid from the funds raised by means of the payment of dues, and if all members of the union understand that a certain

portion of their dues goes to the publication of that newspaper, then in order for that newspaper to take any position with respect to any candidate, it would have to charge a subscription by the month or by the year, in order that it might express its views in that respect; is that so?

"Mr. TAFT. I am inclined to think so, just as a corporation gets out regular house organs to its members, and if that corporation interferes in a political election through one of those house organs it violates the Corrupt Practices Act. . . ." (*Id.* 6437–6438.)

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"Mr. MAGNUSON. In order to determine the meaning of that, let us assume a concrete example. The International Brotherhood of Teamsters have a newspaper, which they have published for many years. It has a circulation of probably 200,000. It is distributed to members. On the newsstand, no price appears on it. No advertisements are accepted. Under this prohibition, would they be prohibited in the future from mentioning in their editorial columns, for their regular circulation, without adding anything additional, the support of a certain candidate or a certain political party?

"Mr. TAFT. We discussed that. We discussed the question of whether or not that newspaper was supported in effect by contributions of corporations or labor organizations, or was paid for by the people who received it. If the latter, I do not think it was an expenditure of union funds or contributions, but if the union simply takes the union funds and publishes a newspaper and uses it as a political organ in an effort to elect or to defeat one man that is prohibited." (*Id.* 6439–6440.)

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"Mr. MAGNUSON. . . . If the pending bill should become law it would mean that all labor organs which are

now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, mentioning his name, or endorsing him for public office?

"Mr. TAFT. No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper. I presume the members would be willing to do so. A union can publish such a newspaper, or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose." (*Id.* 6440.)